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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 539

THE OHIO BELL TELEPHONE COMPANY,
APPELLANT,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

FILED NOVEMBER 20, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 539

THE OHIO BELL TELEPHONE COMPANY, APPELLANT,

THE PUBLIC UTILITIES COMMISSION OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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12—Article contained on pp. 262-269, Bell Tel. Journal issue October, 1924, entitled "The 1924 Stock issue of A. T. & T. Co." written and testified to by witness Blair-Smith (omitted in printing)	14992	
18—Pp. 565-66 of article appearing in July, 1928, Bell System Technical Journal entitled "Carrier Systems on Long Distance Telephone Lines" by H. A. Affel, C. S. Demarest and C. W. Green (omitted in printing)	14993	
20—Pp. 92-102, Bell Telephone Quarterly of April, 1931, by W. L. Dusenberry, entitled "Teletypewriter Service and its Present-Day Uses" (omitted in printing)	14994	

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22—Pp. 141-149 Bell System Technical Journal, issue January, 1930, by A. B. Clark, entitled "Wire Line Systems for National Broadcasting" (omitted in printing)	14907	
26—Article appearing in Bell Telephone Quarterly issue January, 1925, entitled "The Work of the Bell Telephone Securities Company" by D. F. Houston, appearing on pages 37-41	14909	9277
28—Pp. 32-42 Bell Telephone Quarterly, issue of January, 1923, entitled "The Budget Plan of the Bell System," by C. A. Heiss (omitted in printing)	15001	
31—Pp. 2-12 Bell Telephone Quarterly, issue of April, 1922, entitled "The Radio Telephone Situation," by A. H. Griswold (omitted in printing)	15011	
32—Pp. 13-22 Bell Telephone Quarterly, issue of April, 1922, entitled "The Work of the Bell Telephone Securities Co.," by D. F. Houston (omitted in printing)	15016	
34—Pp. 238-252 Bell Telephone Quarterly, issue of October, 1926, entitled "Some Problems of Statistics and Economic Research in the Bell System," by C. A. Heiss (omitted in printing)	15016	
38—Pp. 542-560 Bell System Technical Journal, issue October, 1925, entitled "Engineering Planning for Manufacture," by G. A. Pennock (omitted in printing)	15018	
39—Pp. 1-14 Bell System Technical Journal, issue January, 1925, entitled "Engineering Cost Studies," by F. L. Rhodes (omitted in printing)	15020	
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10—Summary of Expense Per Service Connection, Columbus Exchange	15673	9633
11—Summary of Expense Per Service Connection, Canton Exchange	15674	9634
12—Summary of Expense Per Service Connection, Nelsonville Exchange	15675	9634
13—Explanation of "Wiring Loss". Amount of same, Jan. 1, 1917, to Dec. 31, 1921, Inc. and for year 1921	15676	9635
Statement of points to be relied upon and designation as to printing record	15678	9636

[fols. 1-2]

IN SUPREME COURT OF OHIO

Docket and Journal Entries

Title: No. 25065

THE OHIO BELL TELEPHONE COMPANY

v.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Action:

Error to the Public Utilities Commission of Ohio

Attorneys:

Counsel for the company: Karl E. Burr, Columbus, Ohio; W. H. Thompson, Indianapolis, Indiana; W. B. Stewart, Ashley M. Van Duzer, Cleveland, Ohio;

Counsel for the Commission: John W. Bricker, Don C. Power, Columbus, Ohio.

Memoranda of Pleadings, etc., Filed, Writs Issued, etc., Judgments, Orders and Decrees

October 27, 1934. Petition in error (13) and præcipe for summons in error filed.

October 27, 1934. Application of Ohio Bell Telephone Company for stay of execution, notice and proof of service filed.

October 27, 1934. Summons in error issued to Sheriff of Franklin County, service to be made on defendant in error, sent by registered mail returnable on or before Nov. 5, 1934. Receipt #4467.

October 31, 1934. Order consolidating causes #24694-24695-25023-25065 and extending time for filing plaintiff's brief to November 15, 1934, defendant's brief to January 1, 1935, and plaintiff's reply brief to January 15, 1935. Carl V. Weygandt, Chief Justice. J. 33—545.

November 5, 1934. Summons in error returned and filed endorsed, "Sheriff's Return, Franklin County, Ohio, Received this writ October 29, 1934 at 9 o'clock A. M. and pur-

suant to its command on October 30, 1934 I served the within named The Public Utilities Commission of Ohio by personally handing to E. J. Hopple, the Chairman of the within named The Public Utilities Commission of Ohio, a true and certified copy of this writ with all the endorsements thereon. Ross E. Anderson, Sheriff of Franklin County, O. By A. C. Dickerson, Deputy, Sheriff's fees $1.18.

November 8, 1934. Order staying and suspending execution of the findings and order of the P. U. C. O. of Sept. 6, 1934 in cause #3307 subject to the terms and conditions herein fixed. Carl V. Weygandt, C. J. J. 33—547,48.

[fol. 3] November 15, 1934. Plaintiff's printed brief filed and proof of service filed.

November 21, 1934. Bond in the sum of $4,000,000. Ohio Bell Telephone Co. as principal and American Telephone and Telegraph Co. as surety approved and filed.

December 6, 1934. 4 additional copies of plaintiff's brief filed.

January 2, 1935. Defendant's printed brief filed and proof of service filed.

January 15, 1935. Plaintiff's printed reply brief and proof of service filed.

January 24, 1935. Complete file from P. U. C. O. filed.

January 29, 1935. Printed additional license contract record references filed.

July 22, 1936. Order Affirmed. J. 34—264.

July 28, 1936. Notice of Ohio Bell Telephone Co. of application for rehearing filed,

August 3, 1936. Application for rehearing filed.

October 7, 1936. Rehearing denied. J. 34—290.

October 14, 1936. Petition for appeal and prayer for reversal filed.

October 14, 1936. Assignment of errors filed.

October 14, 1936. Jurisdictional statement filed.

October 14, 1936. Appeal allowed by Carl V. Weygandt, Chief Justice.

October 14, 1936. Order allowing appeal filed.

October 14, 1936. Citation served and filed.

October 14, 1936. Appeal bond in sum of $20,000,000. Ohio Bell Telephone Co. as principal and American Telephone and Telegraph Co., as surety approved and filed.

October 14, 1936. Cost bond in sum of $1000.00 Ohio Bell Telephone Co. and American Surety Company as surety approved and filed.

October 14, 1936. Proof of service as required by Rule 12, paragraph 2, filed.

October 14, 1936. Præcipe for record filed.

October 14, 1936. Stipulations (1) (2) and (3) filed.

October 28, 1936. Stipulation No. 4 filed.

[fol. 4] Journal Entries

In Supreme Court of Ohio

Nos. 24694, 24695, 25023, 25065

The Ohio Bell Telephone Company,

vs.

The Public Utilities Commission of Ohio

Order Consolidating Causes—October 31, 1934

It appearing to the Court that The Ohio Bell Telephone Company has filed petitions in error in this Court from the findings of The Public Utilities Commission of Ohio—"In the matter of the investigation and inquiry by The Public Utilities Commission of Ohio upon its own motion for the determination (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and exchange, (b) of the just and reasonable rates and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio", and being cause No. 3307 on the docket of the Commission, and it further appearing that there are now pending in this Court petitions in error in cases Nos. 24,694, 24695, 25023, and 25065, and that all of said petitions in error arise out of Cause No. 3307 on the docket of The Public Utilities Commission of Ohio, hereinbefore referred to, and which cause is commonly known as the company-wide Ohio Bell Telephone case, and it further appearing that a single brief should suffice to present all the questions raised by the petitions in error hereinbefore referred to, and that the interests of all parties involved would be best served by a consolidation of all of said causes, it is

Ordered, That said causes Nos. 24694, 24695, 25023 and 25065 be and they hereby are consolidated and that on or before November 15, 1934 plaintiff in error shall file in said consolidated causes its brief; and that the defendant in error shall file its answer brief in said consolidated causes [fol. 5] by the first day of January, 1935; and plaintiff in error its reply brief, if it desires to file one, by the 15th day of January, 1935; that said briefs when so filed shall be considered as complying with the rule of this court as to the briefs for all of said causes; that the record of the commission in said cause No. 3307 shall be filed in said consolidated causes and that when so filed it shall be and constitute the record in the consolidated causes.

And it further appearing to the Court that the printed petition in error in said consolidated cause No. 25065 is voluminous by reason of the length of the findings and orders of The Public Utilities Commission of Ohio therein set forth, and that for the brief of plaintiff in error to contain a copy of said petition in error would make said brief unduly voluminous, it is ordered that Section 16 of Rule 2 of this court providing that the printed brief of plaintiff in error shall contain a copy of the petition in error shall be and the same hereby is dispensed with.

Carl V. Weygandt, Chief Justice.

Journal 33, page 545.

IN SUPREME COURT OF OHIO

[Title omitted]

ORDER STAYING AND SUSPENDING EXECUTION OF THE FINDINGS AND ORDER OF THE PUBLIC UTILITIES COMMISSION OF OHIO OF SEPTEMBER 6, 1934, IN CAUSE NO. 3307 ON THE DOCKETS OF THE COMMISSION SUBJECT TO THE TERMS AND CONDITIONS HEREIN FIXED—November 8, 1934

Come, now, this 8th day of November, 1934, the Ohio Bell Telephone Company, plaintiff in error in the above entitled cause, by Karl E. Burr, W. H. Thompson, W. B. Stewart, and Ashley M. Van Duzer, its attorneys, and The Public Utilities Commission of Ohio, defendant in error, by John W. Bricker, Attorney General of the State of Ohio, and

by Donald C. Power, attorney for The Public Utilities [fol. 6] Commission of Ohio, and

This cause coming on to be heard on the application of plaintiff in error for an order of this court staying and suspending execution of the findings and order of The Public Utilities Commission of Ohio of September 6, 1934, in cause No. 3307 on the docket of the Commission, and it appearing to the Court:

That due notice of the time and place of the hearing of such application for an order staying and suspending the execution of the findings and order above referred to has been given to defendant in error in accordance with the provisions of the General Code of Ohio;

That said order requires plaintiff in error, on or before ninety days from the date thereof, to make refunds in the sum of $11,423,137. for the years 1925 to 1932, inclusive, to its exchange subscribers, and the sum of $409,127. for the years 1925 and 1926 to its toll patrons, a total of $11,832,264., with interest, being a portion of increases in plaintiff in error's rates made effective pursuant to the Robinson and Pence Laws (108 Ohio Laws 1094 and 110 Ohio Laws 306, respectively);

That plaintiff in error has raised in its petition in error in this cause questions with respect to said findings and order which require the consideration and determination of this Court on their merits;

That unless said stay and suspension of said findings and order be granted, plaintiff in error may lose substantial sums of money pending the final determinal of this cause, which money it will not be able to recover from its subscribers and patrons if this court shall reverse the said findings and order;

That plaintiff in error has already executed bonds in the aggregate penal sum of $14,166,768., with surety, all of which bonds have been approved by the Commission and are now in full force and effect, conditioned for the repayment by plaintiff in error of such portion of said increases [fol. 7] in its rates made effective pursuant to the Robinson and Pence laws as thereafter, upon final hearing, should be determined by the Commission to be reasonable and excessive; that said bonds, together with an additional bond in the penal sum of $4,000,000., conditioned in like manner, will be adequate and sufficient surety to cover any liability of plaintiff in error in respect to said refunds; and

The Court having heard the arguments of counsel and being fully advised in the premises, now Orders;

First. That the findings and order of The Public Utilities Commission of Ohio dated September 6, 1934, in cause No. 3307 on the dockets of such Commission, be and the same are hereby stayed and suspended until the final determination of this cause by this Court, or until the further order of this Court, except insofar as they require information respecting rate collections under bond made by plaintiff in error prior to June 30, 1925, provided that plaintiff in error file with the Clerk of this Court within twenty days from this date an additional bond in the penal sum of $4,000,000. payable to the State of Ohio and conditioned that plaintiff in error shall well, truly and promptly pay all damages arising from or caused by the delay in the enforcement of said findings and order complained of and pay to all persons, firms and corporations the refunds fixed by the order complained of, in the event such order be sustained; and the Court now approves the American Telephone and Telegraph Company as surety on said bond and directs that the same be filed with the Clerk of this Court and approved by him.

Second. That said bonds in the aggregate sum of $14,166,768.94 heretofore filed by plaintiff in error with said Commission and approved by it shall not be affected by this order of stay and suspension but shall remain in full force and effect in accordance with the terms of said respective bonds.

Third. That this Court retain jurisdiction for the purpose [fol. 8] of requiring plaintiff in error to file an additional bond or bonds in this cause if, after notice and hearing, this Court shall determine that a reasonable cause exists for requiring further and additional bonds.

Fourth. This order of stay and suspension shall be in full force and effect from the entry thereof and shall continue in full force and effect until the final decision of this cause in this court, or the further order of this Court, provided, however, that if plaintiff in error shall fail to file said bond in the amount and with the surety and penalty as provided herein within twenty days from the entry of this order, this stay and suspension shall be void.

Carl V. Weygandt, C. J.

Journal 33, pages 547 and 548.

IN SUPREME COURT OF OHIO

[Title omitted]

Error to the Public Utilities Commission of Ohio

JUDGMENT—July 22, 1936

This cause being a consolidated cause into which, by the order of this Court of October 31, 1934, there were consolidated causes Nos. 24694, 24695, 25023 and 25065, and which said consolidated cause was heard by this Court upon a single record of the proceedings of The Public Utilities Commission of Ohio in case No. 3307, was briefed and argued as one cause and disposed of in a single opinion of this court, came on to be heard upon said record. On consideration whereof it is ordered and adjudged by this Court [fol. 9] that the order of the said The Public Utilities Commission of Ohio, complained of in this consolidated cause, be and the same is hereby affirmed for the reasons stated in said opinion filed in this consolidated cause; and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein.

It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended taxed at $—.

Ordered, That a special mandate be sent to The Public Utilities Commission of Ohio, to carry this judgment into Execution.

Journal 34, page 264.

IN SUPREME COURT OF OHIO.

[Title omitted]

ORDER DENYING REHEARING—October 7, 1936

It is ordered by the Court that rehearing herein be, and the same hereby is, denied.

Journal 34, page 290.

[fol. 10] IN SUPREME COURT OF OHIO

Docket and Journal Entries

No. 24694

Title:

THE OHIO BELL TELEPHONE COMPANY

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Action:

Error to the Public Utilities Commission of Ohio

Attorneys:

Counsel for the company: Karl E. Burr, Columbus, Ohio; W. H. Thompson, Indianapolis, Indiana; W. B. Stewart, Ashley M. Van Duzer, Cleveland.

Counsel for the Commission: John W. Bricker, Donald C. Powers, Columbus, Ohio.

Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders and Decrees

March 14, 1934. Petition in error (12) and præcipe for service of summons filed.

March 14, 1934. Motion by plaintiff in error for stay of execution of final order of Public Utilities Commission filed. 3-14-34 proof of service filed.

March 14, 1934. Statement of interested parties filed.

March 14, 1934. Summons in error issued to Sheriff of Franklin County, service to be made on defendant, sent by registered mail. Returnable March 26, 1934. Receipt #4347.

March 16, 1934. Summons in error returned and filed endorsed "Sheriff's return, Franklin County, Ohio, March 15, 1934, Received this writ March 15, 1934, at 9 o'clock A. M. and pursuant to its command, on March 15, 1934, I served the within named, the P. U. C. O. by personally handing to David S. Archer, Assistant Secretary of the within named the P. U. C. O., a true and certified copy of this writ with all the endorsements thereon. Ross E. Anderson, Sheriff of Franklin County, O., by A. C. Dickerson, Deputy, Sheriff's fees $1.18."

March 21, 1934. Motion by plaintiff in error for stay of execution of final order of the Public Utilities Commission overruled. J. 33-413.

March 20, 1934. Entry granting the parties herein leave to file joint brief and extending time for plaintiff in error to file its brief on or before May 15, 1934 and defendant in error to file its brief on or before July 15, 1934 and plaintiff reply brief on or before August 15, 1934. Carl V. Weygandt, C. J., J. 33—page 410.

May 14, 1934. Printed brief of plaintiff in error and proof of service filed. (Same as #24695.)

[fol. 11] June 1, 1934. Order dispensing with filing defendants brief and plaintiffs reply brief until further order of Court. Carl V. Weygandt, Chief Justice. J. 33—469.

October 31, 1934. Order consolidating cases #s 24694-95, 25023-25065 and extending time to file plaintiffs brief to November 15, 1934, Defendants brief to Jan. 1, 1935, plaintiffs reply brief to Jan. 15, 1935. Carl V. Weygandt, C. J. J. 33—545.

Journal Entries

In Supreme Court of Ohio

[Title omitted]

Order as to Record and Briefs—March 20, 1934

On this the 17th day of March, 1934, comes now The Ohio Bell Telephone Company, plaintiff in error in the above causes, by Karl E. Burr, W. H. Thompson, and W. B. Stewart, its attorneys, and The Public Utilities Commission of Ohio, defendant in error, by John W. Bricker, Attorney General of the state of Ohio, and by Don C. Power, its attorneys, and it appearing to the Court:

That both of said above entitled causes are proceedings in error to reverse, vacate and set aside the findings and orders of said Commission entered on January 16th and March 1st, 1934, in cause No. 3307 on the dockets of said Commission;

That in said cause No. 24694 it is sought to reverse, vacate and set aside orders in their entirety, and in said cause No. 24695 to reverse vacate and set aside said orders insofar as they ascertain and find the value of the intrastate property of plaintiff in error;

That in both of said proceedings in error many of the questions involving are identical;

[fol. 12] That the record of the entire proceedings before said Commission in said cause No. 24694 will necessarily contain all the records in said cause No. 24695, and The Court having heard the arguments of counsel and being fully advised in the premises and with the consent of the parties heretofore now orders:

First. That the briefs of the plaintiff in error and of the defendant in error in cause No. 24694, which shall discuss all the questions involved in said cause, may be filed as the briefs of the plaintiff in error and of the defendant in error, respectively, in cause No. 24695, and the said briefs when so filed in said cause No. 24695 shall be considered as complying with the rules of this court with respect to briefs in that cause;

Second. That when the Public Utilities Commission of Ohio shall have filed in this court a complete transcript of the record duly certified by it in said cause No. 24694, said transcript of the record shall be considered likewise as the transcript of the record in cause No. 24695 and as having been filed in said cause;

Third. That although not required to print the record in either of said causes, either party hereto may print for the use of this court any portion of the record so certified by the defendant in error in cause No. 24694, and file the same in either or both of said causes, as it deems proper.

Fourth. That upon the motions of plaintiff in error and defendant in error, respectively, an extension of time be granted the plaintiff in error to file its opening brief herein on or before the 15th day of May 1934, and to the defendant in error to file its answering brief herein on or before the 15th day of July 1934, and to plaintiff in error to file its reply brief herein on or before the 15th day of August 1934.

(See original entry for approvals.)

Carl V. Weygandt, C. J.

Journal 33, page- 409-410.

[fol. 13] IN SUPREME COURT OF OHIO

ORDER OVERRULING MOTION FOR STAY OF EXECUTION

Wednesday, March 21, 1934. Motion by plaintiff in error for stay of execution of final order of the Public Utilities Commission. It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal 33, page 413.

IN SUPREME COURT OF OHIO

ORDER AS TO BRIEFS

Friday, June 1, 1934. Entry. It appearing to the Court that in the above entitled causes the plaintiff in error is seeking a review of certain findings and orders of the Public Utilities Commission of Ohio made and entered in cause No. 3307 on the docket of said Commission and has fuly filed its brief herein, and it appearing further that said commission proposes to make other and further orders in said cause No. 3307 which may be made the subject of further proceedings in error in this court, and it further appearing that all alleged errors of said Commission in said cause complained of by the plaintiff in error should be submitted to this Court at one time and upon one set of briefs if possible, it is ordered that plaintiff in error and defendant in error appear in this court by their counsel on September 14, 1934, at which time the date for filing further briefs in these causes and any related causes will be considered and passed upon and that in the meantime the filing of the defendant in error's answering brief and of plaintiff in error's reply brief be not required.

Carl V. Weygandt, C. J.

Journal 33, page 469.

(See transcript in No. 25065 for further entries.)

[fol. 14] IN SUPREME COURT OF OHIO

Docket and Journal Entries

No. 24695

Title:

THE OHIO BELL TELEPHONE COMPANY

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Action:

Error to the Public Utilities Commission of Ohio

Attorneys:

Counsel for the company: Karl E. Burr, Columbus, Ohio; W. H. Thompson, Indianapolis, Indiana; W. B. Stewart, Ashley M. Van duzer, Cleveland, Ohio.

Counsel for the Commission: John W. Bricker, Donald C. Power, Columbus, Ohio.

Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders and Decrees

March 14, 1934. Petition in error (12) and præcipe for service of summons filed.

March 14, 1934. Statement of interested parties filed.

March 14, 1934. Summons in error issued to Sheriff of Franklin County. Service to be made on defendant. Sent by registered mail, returnable Mar. 26, 1934. Receipt #4347.

March 16, 1934. Summons in Error returned and filed endorsed. "Sheriff's return. Franklin County, Ohio, March 15, 1934, Received this Writ March 15, 1934 at 9 o'clock A. M. and pursuant to its command on March 15, 1934, I served the within named the Public Utilities Commission of Ohio by personally handing to David S. Archer, Asst. Secretary of the within named the P. U. C. O. a true and certified copy of this writ with all the endorsements thereon. Ross E. Anderson, Sheriff of Franklin County, O., O. A. Dickerson, Deputy. Sheriff Fees $1.18."

March 20, 1934. Entry granting the parties herein leave to file joint brief and extending time for plaintiff to file its

brief to May 15, 1934 and defendant to file its brief to July 15, 1934, and plaintiff's reply brief to Aug. 15, 1934. Carl V. Weygandt, C. J., J. 33, 410.

May 14, 1934. Printed brief of plaintiff in error and proof of service filed (same as #24694.)

June 1, 1934. Order dispensing with filing of defendant's brief and plaintiff's reply brief until further order of Court. Carl V. Weygandt, C. J., J. 33, 469.

October 31, 1934. Order consolidating case #s 24694-24695-25023-25065 and extending time to file plaintiff's brief to November 15, 1934, defendant's brief to January 1, 1935 and plaintiff's reply brief to January 15, 1935. Carl V. Weygandt, Chief Justice. J. 33, 545.

[fol. 15] Journal Entries

In Supreme Court of Ohio

[Title omitted]

Order as to Record and Briefs

On this the 17th day of March, 1934, comes now The Ohio Bell Telephone Company, plaintiff in error in the above causes, by Karl E. Burr, W. H. Thompson, and W. B. Stewart, its attorneys, and The Public Utilities Commission of Ohio, defendant in error, by John W. Bricker, Attorney General of the State of Ohio, and by Don C. Power, its attorneys and it appearing to the Court:

That both of said above entitled causes are proceedings in error to reverse, vacate and set aside the findings and orders of said Commission entered on January 16th and March 1st, 1934, in cause No. 3307 on the dockets of said Commission;

That in said cause No. 24694 it is sought to reverse, vacate and set aside orders in their entirety, and in said cause No. 24695 to reverse, vacate and set aside said orders insofar as they ascertain and find the value of the intrastate property of plaintiff in error;

That in both of said proceedings in error many of the questions involving are identical;

That the record of the entire proceedings before said Commission in said cause No. 24694 will necessarily contain all the records in said cause No. 24695, and The Court having heard the arguments of counsel and being fully advised in the premises and with the consent of the parties heretofore now orders:

First. That the briefs of the plaintiff in error and of the defendant in error in cause No. 24694, which shall discuss all the question- involved in said cause, may be filed as the briefs of the plaintiff in error and of the defendant in error, respectively, in cause No. 24695, and the said briefs when so filed in said cause No. 24695 shall be considered as complying with the rules of this Court with respect to briefs in that cause;

[fol. 16] Second. That when the Public Utilities Commission of Ohio shall have filed in this court a complete transcript of the record duly certified by it in said cause No. 24694, said transcript of the record shall be considered likewise as the transcript of the record in cause No. 24695 and as having been filed in said cause;

Third. That although not required to print the record in either of said causes, either party hereto may print for the use of this Court any portion of the record so certified by the defendant in error in cause No. 24694, and file the same in either or both of said causes, as it deems proper.

Fourth. That upon the motions of plaintiff in error and defendant in error, respectively, an extension of time be granted the plaintiff in error to file its opening brief herein on or before the 15th day of May, 1934, and to the defendant in error to file its answering brief herein on or before the 15th day of July 1934, and to plaintiff in error to file its reply brief herein on or before the 15th day of August 1934.

(See original entry for approvals.)

J. 33 page 409-410.

Carl V. Weygandt, C. J.

(See transcript in No. 25065 for further entries.)

[fol. 17] IN SUPREME COURT OF OHIO

Docket and Journal Entries

No. 25023

Title:

THE OHIO BELL TELEPHONE COMPANY

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Action:

Error to the Public Utilities Commission of Ohio

Attorneys:

Counsel for the company: Karl E. Burr, Columbus, Ohio; W. H. Thompson, Indianapolis, Indiana; W. B. Stewart, Ashley M. Van Duzer, Cleveland, Ohio;

Counsel for the Commission: John W. Bricker, Don C. Power, Columbus, Ohio.

Memoranda of Pleadings, etc., Filed, Writs Issued, etc., Judgments, Orders and Decrees

August 29, 1934. Petition in error and præcipe for summons filed.

August 29, 1934. Statement of interested parties filed.

August 29, 1934. Summons in error issued to Sheriff of Franklin County, service to be made on defendants named therein, sent by registered mail. Returnable on or before Sept. 10, 1934. Receipt #19201.

September 4, 1934. 10 additional printed copies of petition in error filed.

September 10, 1934. Summons in error returned and filed endorsed, "Sheriff's return. Franklin County, Ohio. Received this writ August 29, 1934 at 9 o'clock A. M. and pursuant to its command on August 31, 1934 I served the within named The Public Utilities Commission of Ohio by personally handing to E. J. Hopple a member of the within named The Public Utilities Commission of Ohio a true and certified copy of this writ with all the endorsements thereon. Ross E. Anderson, Sheriff of Franklin County, Ohio, by L. A. Donovan, Deputy, Sheriff's fees $1.15.

November 15, 1934. For plaintiffs printed brief see cause 25065.

October 31, 1934. Order consolidating case #s 24694-24695-25023-25065 and extending time to file plaintiffs brief to November 15, 1934 defendants brief to January 1, 1935 and plaintiffs reply brief to January 15, 1935. Carl V. Weygandt, C. J. J. 33-545.

(See transcript in No. 25065 for further entries.)

[fol. 18] Clerk's certificate to foregoing papers omitted in printing.

[fol. 19] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL AND PRAYER FOR REVERSAL—Filed October 14, 1936

To the Honorable The Chief Justice of the Supreme Court of Ohio:

Your petitioner, The Ohio Bell Telephone Company, an Ohio corporation, appellant in the above entitled cause and plaintiff in error in the cause in the Supreme Court of Ohio hereinafter referred to, considering itself aggrieved by the final decision and judgment of the Supreme Court of Ohio entered on the 22nd day of July, 1936, (which judgment became final on the 7th day of October, 1936, upon the overruling of appellant's application for rehearing) in the cause entitled:

"The Ohio Bell Telephone Company, Plaintiff in Error, vs. The Public Utilities Commission of Ohio, Defendant in Error, Consolidated Cause No. 25065."*

on the docket of said court, affirming the orders of The Public Utilities Commission of Ohio of January 16, March 1,

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* The original causes which were consolidated into cause No. 25065 were numbers 24694, 24695, 25023 and 25065. By an order by the Supreme Court of Ohio these causes were consolidated into a single cause, heard on a single record, briefed and argued as one cause and disposed of in a single opinion by the Supreme Court of Ohio.

[fol. 20] July 5 and 9 and September 6, 1934, entered by the Commission in a company-wide investigation of the fair value of petitioner's intrastate property and the reasonableness of its rates throughout the State of Ohio, hereby files this its petition for an appeal from said decision and judgment.

In said above entitled cause in the Supreme Court of Ohio there is drawn in question the validity of a statute of Ohio, on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States, in that it deprives appellant of its property without due process of law and denies to it the equal protection of the laws. Said statute consists of said orders of the Commission wherein and whereby the Commission found the value of appellant's intrastate telephone property, and its net income therefrom for the years 1925 to 1933, inclusive, and ordered appellant to refund for the years 1925 to 1932, inclusive, the sum of $11,832,264 collected by it under bonds from its patrons in said years.

The decision and final judgment of the Supreme Court of Ohio herein appealed from were in favor of the validity of the Commission's said orders.

The Supreme Court of Ohio is the highest court of the State of Ohio in which a decision in this suit could be had.

Petitioner shows that this case is one in which under the legislation in force (Sec. 237 Judicial Code as amended, 28 U. S. C. A. 344) when the Act of January 31, 1928, was passed (Chapter 14, 45 Stat. 54; U. S. C. A. Title 28, Sections [fol. 21] 861 a and b), a review could be had in this court as a matter of right on a writ of error.

This petition is accompanied by an assignment of errors, setting forth the grounds upon which it is contended that the decision and judgment of the Supreme Court of Ohio should be reversed, and a statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review said decision and judgment of the Supreme Court of Ohio.

Wherefore, your petitioner prays:

That an appeal may be allowed herein from the Supreme Court of Ohio to the Supreme Court of the United States in order that said decision and judgment of the Supreme Court of Ohio may be examined and reversed; that a tran-

script of the material parts of the record in this cause, duly authenticated, may be ordered to be prepared and certified to the Supreme Court of the United States as provided by law; that an order may be made fixing the security to be required of petitioner; that the supersedeas and cost bonds tendered herewith by petitioner may be approved and a supersedeas granted; and that there shall issue to appellee a citation, directing said appellee to appear in the Supreme Court of the United States at Washington within forty days from the date hereof and there to show cause, if any there be, why said decision and judgment should not be reversed [fol. 22] and speedy justice done appellant in that behalf.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.

Service of the foregoing petition for appeal, and receipt of a copy thereof at Columbus, Ohio, this 14" day of October, 1936, is hereby acknowledged.

John W. Bricker, Attorney General of the State of Ohio, and Donald C. Power, Attorneys for Appellee. The Public Utilities Commission of Ohio, by E. J. Hopple, Chairman.

[fol. 22½] [File endorsement omitted.]

[fol. 23] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed October 14, 1936

Appellant, The Ohio Bell Telephone Company, an Ohio corporation, for its assignment of errors herein says that the Supreme Court of Ohio in its decision and judgment in the cause entitled

"The Ohio Bell Telephone Company, Plaintiff in Error, vs. The Public Utilities Commission of Ohio, Defendant in Error, Consolidated Cause No. 25065,"

erred in approving the findings and affirming the orders of The Public Utilities Commission of Ohio of January 16, March 1, July 5 and 9, and September 6, 1934 (entered in a

company-wide case in which the Commission determined for each of the years 1925 to 1933, inclusive, the fair value of appellant's intrastate property, its net income, and the reasonableness of its intrastate rates, and orders it to refund the aggregate sum of $11,832,264 of excess rates collected by it under bond during said years, with interest) in each of the following particulars; and that in each such particular appellant was deprived of its property without due process of law and it was denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States:

[fol. 24] 1. In affirming the Commission's finding and order in which, after finding the value of appellant's property used in intrastate service as of June 30, 1925, the Commission fixed the value of such property for each of the subsequent years, 1926 to 1933, inclusive, solely by the application of a price trend percentage to the total value found for the property for the preceding year, plus net additions, which order, on the basis of the value so fixed, ordered appellant to refund for said years the total sum of $10,462,787.

2. In affirming the Commissions' finding and order whereby appellant was denied a fair trial by the use of such price trend percentages, in that they were based upon secret information undisclosed to appellant, not offered or introduced in evidence and which appellant was denied the opportunity to examine or rebut. Upon the valuations so fixed appellant was ordered to refund for the years 1926 to 1933, inclusive, the total sum of $10,462,787.

3. In affirming the Commission's finding and order denying appellant's repeated requests for an opportunity to examine and rebut such price trend information.

4. In affirming the Commission's finding and order that appellant's net income for the years 1925 to 1933, inclusive, was as specified in column (a) hereof, when in fact it was not more than that specified in column (b) hereof, to-wit:

	(a)	(b)
1925	$8,382,171	$6,014,180
1926	9,165,227	6,726,922
1927	9,759,167	7,260,885
1928	10,494,542	8,266,094
1929	10,896,937	8,200,940

	(a)	(b)
1930	10,951,087	8,068,933
1931	11,102,418	8,115,568
1932	8,257,746	7,086,738
1933	6,959,232	6,160,952

[fol. 25] 5. In affirming the Commission's finding and order which disallowed a large part of appellant's operating expenses on account of the annual expense of depreciation in respect of its intrastate property. The Commission purported to base its allowance for this expense upon appellant's retirement experience but used for such purpose appellant's retirement experience for only the four-year period immediately preceding June 30, 1925 and wholly disregarded appellant's retirement experience during the period under investigation. The Commission's allowance for such expense of depreciation for the period 1925 to 1933, inclusive, was $8,067,266 less than the net cost of appellant's intrastate plant retirements during said years. It was error to limit the expense of depreciation for appellant's growing plant to its retirements, but the court further erred in affirming the Commission's allowances for depreciation, which, as shown above, were $8,067,266 less than such retirement loss.

6. In affirming the Commission's finding and order that there should be excluded from appellant's operating expenses the following sums for the following years, being a part of appellant's annual payments to American Telephone and Telegraph Company for license contract services in the operation of appellant's intrastate property:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

[fol. 26] 7. In affirming the Commission's finding and order that appellant be required to refund to subscribers in various of its exchanges and to certain of its toll patrons, respectively, the following sums for the following years:

	Exchange	Toll
1925	$1,137,195	$232,282
1926	1,637,314	176,845
1927	1,823,857	.....
1928	1,772,238	.....
1929	1,344,624	.....
1930	1,357,589	.....
1931	1,519,405	.....
1932	830,915	.....
Total	$11,423,137	$409,127

on account of claimed excess rates collected in cases where rates had been made effective under bond under authority of the Robinson and Pence Laws (108 O. L. 1094, 110 O. L. 366) as hereinafter in Assignment 8 set forth. Said refund orders were unlawful because based upon the substantial undervaluation of appellant's intrastate property and the erroneous disallowance of large portions of appellant's operating expenses.

8. In affirming the Commission's finding and order that appellant be required to refund to subscribers in certain of its exchanges and to certain of its toll patrons the aggregate sum of $11,832,264. Appellant was denied a fair trial in that the amount of said refunds was arrived at by the use of accounting apportionments bearing no relation to the value of appellant's property or its net income in the bond cases.

Under the said Robinson and Pence Laws appellant in- [fol. 27] creased certain of its rates for specific classes of exchange service at many of its exchanges and for parts of its toll service, under bonds, a separate bond being applicable to each exchange in which any rate had been so increased and a separate bond being applicable similarly to the toll system, conditioned in each instance for the repayment by appellant of the portion of the increase finally determined by the Commission to be excessive.

Appellant's other rates remained in effect without bond.

The Commission refused to find whether any rate, exchange or toll, so collected under bond, was excessive for any year and refused appellant's requests to receive evidence and to make findings as to property values and net income in the bond cases.

The method of apportionment used by the Commission was based upon exchange service revenues, that is the gross revenues derived from the operation of appellant's several exchanges. In applying said method the Commission erroneously treated as bonded revenues all revenues in any exchanges where any portion of any rate was collected under bond. The amounts to be refunded were fixed by applying to appellant's excess earnings as found by the Commission the percentage which the bonded revenues thus calculated bore to the total exchange service revenues. By treating as bonded revenues, revenues not in fact collected under bond, the amount of the refunds was increased by more than $4,000,000.

[fol. 28] The allocation of $409,127 to be refunded to the patrons of appellant's toll system for the years 1925 and 1926 was based on no evidence and, therefore, purely arbitrary. Such allocation was not based upon a consideration by the Commission of the fair value of appellant's property, net income, revenues bonded or nonbonded or expenses in such toll system. Instead, such allocation of $409,127 was merely the result of assigning to said toll system, to be refunded therein for the years 1925 and 1926, the amounts by which the total excess earnings found by the Commission for those years could not be absorbed by amounts collected under bond in the bonded exchanges in those years.

The entire method used by the Commission was arbitrary in itself and arbitrarily applied and the refunds ordered bore no relation to the claimed excess earnings of appellant collected under bond.

9. In affirming the Commission's refusal to determine the just and reasonable rates to be charged by appellant for 1934 and thereafter until changed according to law, although appellant repeatedly requested the Commission so to do.

10. In affirming the Commission's refusal, after having found that for 1933 appellant's then effective rates had produced no excess net income, to fix such then effective rates as the rates to be charged by appellant for the future, or to accord to appellant a hearing and the right to intro-

duce evidence as to the fair value of its property, net in-
[fol. 29] come and fair rate of return for the year 1934.

11. In affirming the Commission's finding and order that the fair value of appellant's used and useful intrastate property was the following amount as of the dates following, to-wit:

June 30, 1925	$93,707,488
Dec. 31, 1926	101,767,774
Dec. 31, 1927	111,036,522
Dec. 31, 1928	122,417,735
Dec. 31, 1929	134,765,576
Dec. 31, 1930	145,683,047
Dec. 31, 1931	145,271,663
Dec. 31, 1932	133,625,655
Nov. 30, 1933	126,250,206

an amount in each instance substantially below its actual fair value.

12. In affirming the Commission's finding and order excluding from the fair value of appellant's intrastate property the following property and elements thereof:

(a) For 1925, parcels of real estate of the value of more than $500,000, on some of which telephone exchange buildings were then in process of construction, and all of which were shortly thereafter in service;

(b) The following amounts of money properly invested by appellant in each of the following years in useful telephone property in process of construction:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

(c) By making no allowance for going value for any of said years.

[fol. 30] 13. In affirming the Commission's finding and order, which substantially undervalued said property for each of said years, as follows:

(a) By disregarding wage rates paid and labor performance experienced by appellant in continuous construction projects for five years preceding 1925;

(b) By refusing in said finding and order, in arriving at the fair value of appellant's said intrastate property, to give proper consideration either to the reproduction cost new or to the actual cost thereof;

(c) By allowing inadequate amounts for the item of undistributed construction costs;

(d) By allowing an amount for right of way inadequate for each of said years by more than $500,000;

(e) By overstating by approximately $3,000,000, the depreciation existing in said property;

(f) By disallowing an increase of approximately ten per cent effective November 1930 in the prices to appellant of telephone apparatus made by Western Electric Company.

14. In failing to accord to appellant a judicial review upon the court's independent judgment as to the facts with respect to each of the constitutional rights herein asserted. Instead the Court sustained the Commission (a) on the ground that there was some evidence to support its findings; (b) without regard to the probative force of the evidence; (c) without making its own investigation of the facts.

15. In affirming the Commission's finding and orders that each of appellant's protests, applications for rehearing and requests should be denied.

[fol. 31] For each of the errors specified above and because in each of said respects said decision and judgment of the Supreme Court of Ohio, in approving the findings and affirming the orders of The Public Utilities Commission of Ohio, deprive appellant of its property without due process of law and deny appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, appellant prays that said decision and judgment be reviewed by the United States

Supreme Court and there reversed and judgment rendered in favor of appellant and for costs.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.

Service of the foregoing assignments of error and receipt of a copy thereof at Columbus, Ohio, is hereby acknowledged this 14th day of October, 1936.

John W. Bricker, Attorney General of Ohio. Donald C. Power, Attorneys for Appellee. The Public Utilities Commission of Ohio, by E. J. Hopple, Its Chairman.

[fols. 31½-189] [File endorsement omitted.]

[fol. 190] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 14, 1936

On this 14th day of October, 1936, The Ohio Bell Telephone Company, appellant in the above entitled cause, which is Consolidated Cause No. 25065 on the docket of the Supreme Court of Ohio, having presented its petition praying for the allowance of an appeal to the Supreme Court of the United States from the decision and judgment of the Supreme Court of Ohio rendered therein on the 22nd day of July, 1936 (which judgment became final on the 7th day of October, 1936, upon the overruling of appellant's application for rehearing), and said appellant having presented therewith its assignment of errors and statement with respect to the jurisdiction of the Supreme Court of the United States on appeal, herein filed with such petition for appeal pursuant to the statutes and to the rules of the Supreme Court of the United States, and it appearing from said petition and the record of the above entitled cause that there is drawn in question therein the validity of the orders of The Public Utilities Commission of Ohio of January 16, March 1, July 5 and 9, and September 6, 1934, on the ground that such orders deprive appellant of its property without due process of law and deny to it the equal protection of the laws. [fol. 191] and are repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of said Supreme Court of Ohio was in favor of the

validity of said orders and that such petition for appeal is a proper petition for the issuance of this order;

It is Now Hereby Ordered that said appeal be and the same hereby is allowed.

And the appellant having presented its bond in the sum of $20,000,000 with American Telephone and Telegraph Company, as surety, conditioned as required by law, It is Further Ordered that said bond be and the same hereby is approved and that the appeal herein shall operate as a supersedeas and stay of execution and of other proceedings under said judgment pending said appeal.

It is Further Ordered that the Clerk of the Supreme Court of Ohio make and transmit to the Clerk of the Supreme Court of the United States under his hand and the seal of the Supreme Court of Ohio the transcript of the record herein, containing a true copy of all parts of the record, papers, proceedings and judgments in this cause which shall be designated by præcipe filed with him by any of the parties hereto, all in accordance with the rules of the Supreme Court of the United States in such cases made and provided.

It is Further Ordered that security for costs on appeal be fixed in the sum of $1000 as provided by law; and said appellant now presents to this court its undertaking in said sum, with American Surety Company of New York, as surety; and it is ordered that such undertaking in said sum be and the same is hereby approved.

It is Further Ordered that a citation to The Public Utilities Commission of Ohio, as appellee, issue, signed by the [fol. 192] Chief Justice of the Supreme Court of Ohio, returnable not exceeding forty days from this date, directing said appellee to show cause, if any, why the said judgment rendered against appellant herein should not be reversed and speedy justice done appellant in that behalf.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

Service of the foregoing order upon appeal and receipt of a copy thereof is here acknowledged at Columbus, Ohio, this 14th day of October, 1936.

John W. Bricker, Donald C. Power, Attorneys for Appellee. The Public Utilities Commission of Ohio, by E. J. Hopple, Chairman.

[fol. 192½] [File endorsement omitted.]

[fols. 193-196] Ctation, in usual form, showing service on Public Utilities Commission of Ohio, filed October 14, 1936, omitted in printing.

[fol. 197] IN SUPREME COURT OF THE UNITED STATES

PRÆCIPE FOR RECORD—Filed October 14, 1936

To the Clerk of the Supreme Court of Ohio:

Please make and transmit to the Supreme Court of the United States under your hand and the seal of the Supreme Court of Ohio as provided by law a true copy of the following material parts of the record before the Supreme Court of Ohio in Consolidated Cause No. 25065 entitled "The Ohio Bell Telephone Company, plaintiff in error, vs. The Public Utilities Commission of Ohio, defendant in error":

(1) All of the papers filed and orders entered to perfect an appeal of this cause to the Supreme Court of the United States, including:

(a) The petition for appeal.

[fol. 198] (b) The assignment of errors.

(c) The jurisdictional statement setting forth the grounds upon which it is contended the Supreme Court of the United States has jurisdiction on appeal.

(d) The order allowing appeal.

(e) Statement to appellee calling its attention to Rule 12, paragraph 3 of the rules of the Supreme Court of the United States and the proof of service upon appellee of all of the foregoing papers.

(f) The citation to appellee and the return made thereon.

(g) Any statements or motions filed by appellee opposing the jurisdiction of the Supreme Court of the United States.

(h) This præcipe.

(i) Any præcipe which may be filed by appellee.

(j) Stipulation No. 1 entered into between the parties with reference to the elimination of certain issues and of certain evidence from the record upon appeal.

(k) Stipulation No. 2 entered into between the parties with reference to the inclusion in the record on appeal of certain of the exhibits from the so-called Chicago case in abbreviated form.

(l) Stipulation No. 3 entered into between the parties with reference to the proceedings in and the bonds given in the several separate rate proceedings before the Commission which were consolidated by said Commission into Case No. 3307 upon its docket.

(m) Any other stipulations filed in this cause.

(n) The bond for costs required by the order allowing appeal and the approval thereof.

[fol. 199] (o) The supersedeas bond required by the order allowing appeal and the approval thereof.

(2) The record of the proceedings in said cause before the Supreme Court of Ohio including:

(a) The docket and journal entries in said court in Causes Numbered 24694, 24695, 25023 and 25065.

(b) Petition in error in Cause No. 25065, including the exhibits thereto attached.

(c) Petition in error in Cause No. 25023 (Consolidated into Cause No. 25065), including the table of exhibits but omitting the exhibits thereto, all of which are included among the exhibits to petition in error No. 25065.

(d) Petition in error in Cause No. 24695 (Consolidated into Cause No. 25065), including the table of exhibits but omitting the exhibits thereto, all of which are included in the exhibits to petition in error No. 25065.

(e) The petition in error in Cause No. 24694 (Consolidated into Cause No. 25065), including the table of exhibits but omitting the exhibits thereto, all of which are included in the exhibits to petition in error No. 25065.

(f) The order of the Supreme Court of Ohio consolidating said cases numbered 24694, 24695, 25023 and 25065 into Consolidated Cause No. 25065.

(g) The opinion of the Supreme Court of Ohio deciding Consolidated Cause No. 25065.

(h) The journal entry and mandate of said court entered upon such decision.

(i) Appellant's application for a rehearing.

(j) The order of said court denying the application for rehearing.

(3) The complete transcript of the docket entries of the Commission in Cause No. 3307, being a company-wide inquiry with respect to appellant's rates and services, en-

[fol. 200] titled "In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio Upon Its Own Motion for Determination:

(a) Of the value of the property of The Ohio Bell Telephone Company toll and exchange, (b) of the just and reasonable rates, and (c) of reasonable rules and regulations for service furnished by said company to its patrons throughout the State of Ohio" as contained in the record of this cause before the Supreme Court of Ohio.

(4) A complete transcript of the docket entries of the Commission in each of the Advanced Utility Rate Proceeding cases consolidated by said Commission with said company-wide case No. 3307.

(5) A complete transcript of the docket entries of the Commission in each of the so-called S cases, being separate cases consolidated into said case No. 3307.

(6) A complete transcript of the docket entries of the Commission in case No. 3181, sometimes known as the "Hubbard Complaint" and consolidated into said case No. 3307.

(7) A complete transcript of the docket entries of the Commission in case No. 1368 relating to telephone rates in Columbus, Ohio, and consolidated into said case No. 3307. [fol. 201] (8) A complete transcript of the docket entries of the Commission in case No. 1900 relating to telephone rates in Columbus, Ohio, and consolidated into case No. 3307.

(9) A complete transcript of the docket entries of the Commission in case No. 1728 known as the "Service Connection Charge Case" and consolidated into said case No. 3307.

(10) The order of the Commission of October 14, 1924, instituting the company-wide investigation No. 3307 and consolidating therewith the then pending separate cases.

(11) The Commission's tentative finding of January 10, 1931.

(12) The Commission's order of January 10, 1931, tentatively fixing value.

(13) The protest of appellant to the order of January 10, 1931, tentatively fixing value.

(14) The Commission's finding of January 16, 1934.

(15) The Commission's order of January 16, 1934.

(16) Appellant's application for rehearing of the Commission's order of January 16, 1934.

[fol. 202] (17) The application and request of appellant of February 17, 1934.

(18) The Commission's order of March 1, 1934.

(19) Appellant's application for rehearing of the Commission's order of March 1, 1934.

(20) The Commission's order of March 9, 1934, overruling appellant's application for rehearing of the order of March 1, 1934.

(21) The Commission's order of July 5, 1934.

(22) The Commission's order of July 9, 1934.

(23) The application and request of appellant of July 31, 1934, with respect to the Commission's order of July 5, 1934.

(24) The application and request of appellant of July 31, 1934, with respect to the Commission's order of July 9, 1934.

(25) The verified return of appellant to the order to show cause contained in the Commission's order of July 5, 1934.

(26) The verified return of appellant to the order to show cause contained in the Commission's order of July 9, 1934.

(27) Appellant's protest and application for rehearing of said orders of July 5 and 9, 1934.

[fol. 203] (28) Appellant's protest and application for rehearing filed with the Commission August 29, 1934.

(29) The Commission's order of September 6, 1934.

(30) Appellant's application and request of September 25, 1934, with respect to the Commission's order of September 6, 1934.

(31) The Commission's order of September 27, 1934.

(32) Appellant's protest and application for rehearing of the Commission's order of September 6, 1934.

(33) The Commission's order of October 19, 1934, overruling appellant's application and protest with respect to said order of September 6, 1934.

(34) The stipulation filed with the Commission December 20, 1932, wherein there was stipulated into the record in cause No. 3307 certain evidence and exhibits theretofore introduced in the so-called Chicago case entitled "Illinois Bell Telephone Company, plaintiff, vs. G. Gale Gilbert et

al., defendants," in the District Court of the United States for the Northern District of Illinois, Eastern Division, it being cause No. 3746 in said court.

[fol. 204] (35) Include in said transcript the following portions of the transcript of the oral testimony in the company-wide case otherwise known as "In re: Investigation and inquiry of the Public Utilities Commission of Ohio upon its own motion for the determination of the value, rates, rules and regulations for service furnished by The Ohio Bell Telephone Company" and numbered 3307 on the docket of said Commission:

Page 1 beginning at the top and ending on page 478 at the bottom.

Page 480 beginning at the top and ending on page 679 at the bottom.

Page 681 beginning at the top and ending on page 1461 at the bottom.

Page 1463 beginning at the top and ending on page 1562 at the bottom.

Page 1663 including only the first six lines.

Page 1665 beginning at the top and ending on page 1796 with line 14.

Page 1798 beginning at the top and ending on page 1937 with line 23.

Page 1941 beginning with line 10 and ending on page 1955 with line 9.

Page 1957 beginning at the top and ending on page 1959 with line 23.

Page 1960 beginning with line 21 and ending on page 2049 with line 2.

[fol. 205] Page 2051 beginning with line 2 and ending on page 2254 at the bottom.

Page 2257 beginning at the top and ending on page 2494 at the bottom.

Page 2497 beginning at the top and ending on page 2661 at the bottom.

Page 2664 beginning with line 6 and ending on page 2736 with line 2.

Page 2743 beginning at the top and ending on page 2946 with line 6.

Page 2950 beginning with line 22 and ending on page 3051 at the bottom.

Page 3056 beginning with line 5 and ending on page 3078 with line 5.

Page 3081 beginning with line 16 and ending on page 3093 with line 18.

Page 3099 beginning with line 7 and ending on page 3140 with line 16.

Page 3145 including only lines 13 to 23 inclusive.

Page 3152 beginning with line 17 and ending on page 3157 with line 14.

Page 3161 beginning with line 18 and ending on page 3298 with line 12.

Page 3303 beginning with line 12 and ending on page 3304 with line 15.

Page 3306 beginning with line 21 and ending on page 3310 with line 17.

[fol. 206] Page 3313 beginning with the third line from the bottom and ending on page 3315 with line 7.

Page 3318 beginning with the second line from the bottom and ending on page 3352 with line 3.

Page 3354 including only line 15.

Page 3356 beginning at the top and ending on Page 3357 with line 16.

Page 3359 including only lines 9 to 26 inclusive.

Page 3360 beginning with line 17 and ending on page 3365 with the fourth line from the bottom.

Page 3367 beginning with line 19 and ending on page 3369 with line 12.

Page 3370 beginning with line 22 and ending on page 3390 with the second line from the bottom.

Page 3392 beginning with the fifth line from the bottom and ending on page 3400 with line 9.

Page 3403 beginning at the top and ending on page 3433 with line 16.

Page 3440 beginning at the top and ending on page 3661 with line 23.

Page 3668 beginning at the top and ending on page 3739 with line 24.

[fol. 207] Page 3742 beginning with line 7 and ending on page 3777 with line 8.

Page 3780 beginning with line 4 and ending on page 3793 with the second line from the bottom.

Page 3818 beginning at the top and ending on page 3843 with line 16.

Page 3846 beginning with line 17 and ending on page 3941 with line 22.

Page 3949 beginning at the top and ending on page 3960 with line 22.

Page 3963 including only lines 4 to 18 inclusive.

Page 3965 beginning at the top and ending on page 3982 with line 4.

Page 3986 beginning at the top and ending on page 4023 with the second line from the bottom.

Page 4025 beginning with line 18 and ending on page 4033 with line 7.

Page 4034 beginning with line 21 and ending on page 4052 with line 20.

Page 4056 beginning with line 6 and ending on page 4067 with line 2.

Page 4071 beginning at the top and ending on page 4166 with line 2.

Page 4167 beginning at the top and ending on page 4185 with line 4.

[fol. 208] Page 4187 beginning with line 19 and ending on page 4190 with line 19.

Page 4195 beginning with the last line and ending on page 4200 with line 1.

Page 4201 beginning with line 14 and ending on page 4203 at the bottom.

Page 4205 beginning with line 8 and ending on page 4226 with line 25.

Page 4228 beginning with line 3 and ending on page 4242 with line 8.

Page 4249 beginning with the sixth line from the bottom and ending on page 4250 at the bottom.

Page 4252 including only lines 1 to 23 inclusive.

Page 4856 beginning at the top and ending on page 4909 with line 20.

Page 4914 beginning with the last line and ending on page 4915 at the bottom.

Page 4917 beginning with line 3 and ending on page 4947 with the second line from the bottom.

Page 4951 beginning with line 12 and ending on page 5003 with line 11.

Page 5005 beginning at the top and ending on page 5090 with line 17.

Page 5093 beginning at the top and ending on page 5123 with line 13.

[fol. 209] Page 5129 including only lines 4 to 17 inclusive.

Page 5131 beginning with line 14 and ending on page 5138 with the third line from the bottom.

Page 5141 beginning with line 6 and ending on page 5171 with the fourth line from the bottom.

Page 5175 including only lines 1 to 16 inclusive.

Page 5177 beginning with line 7 and ending on page 5240 with line 16.

Page 5249 beginning with line 7 and ending on page 5253 with the fifth line from the bottom.

Page 5257 beginning with line 6 and ending on page 5276 with line 10.

Page 5280 beginning with line 8 and ending on page 5281 with line 7.

Page 5283 including only the last three lines.

Page 5305 beginning at the top and ending on page 5373 with line 6.

Page 5549 beginning at the top and ending on page 5558 with line 11.

Page 5560 beginning at the top and ending on page 5726 at the bottom.

[fol. 210] Page 5822 including only lines 1 to 6 inclusive.

Page 5873 beginning at the top and ending on page 5989 at the bottom.

(36) Also include in said transcript the following portions of the stipulated testimony from the Chicago case entitled "Illinois Bell Telephone Company vs. Gilbert" appearing in the printed volumes known as "Abstract":

The testimony of Allen G. Hoyt beginning on page 151 and ending on page 160; and the further testimony of said witness beginning on page 187 and ending on page 217.

The testimony of Carroll O. Bickelhaupt beginning on page 270 and ending on page 294.

The testimony of Lambert N. Whitney beginning on page 295 and ending on page 299.

The testimony of Allan B. Crunden beginning on page 300 and ending on page 308.

The testimony of Richard H. Gregory beginning on page 309 and ending on page 338; and the further testimony of said witness beginning on page 342 and ending on page 404.

The testimony of Edgar S. Bloom beginning on page 404 and ending on page 432.

[fol. 211] The testimony of Richard H. Gregory beginning on page 433 and ending on page 485.

The testimony of Allan B. Crunden beginning on page 522 and ending on page 525.

The testimony of B. Gherardi beginning on page 526 and ending on page 553.

The testimony of Allan B. Crunden beginning on page 553 and ending on page 561.

The testimony of Richard H. Gregory beginning on page 562 and ending on page 592.

The testimony of Allan B. Crunden beginning on page 607 and ending on page 611.

The testimony of Frank B. Jewett beginning on page 611 and ending on page 742.

The testimony of Allan B. Crunden beginning on page 742 and ending on page 744.

The testimony of Arthur W. Page beginning on page 745 and ending on page 749.

The testimony of Charles A. Heiss beginning on page 819 and ending on page 820.

The testimony of Edwin F. Carter beginning on page 821 and ending on page 833.

The testimony of Charles A. Heiss beginning on page 841 and ending on page 849.

[fol. 212] The testimony of Hugh Blair-Smith beginning on page 849 and ending on page 880.

The testimony of Charles A. Heiss beginning on page 881 and ending on page 899.

The testimony of Charles P. Cooper beginning on page 899 and ending on page 909.

The testimony of Charles A. Heiss beginning on page 909 and ending on page 1048.

The testimony of A. D. Grote beginning on page 1061 and ending on page 1066.

The testimony of Richard H. Gregory beginning on page 1069 and ending on page 1077.

The testimony of Charles A. Heiss beginning on page 1086 and ending on page 1097; and the further testimony of said witness beginning on page 1144 and ending on page 1152.

The testimony of Edward E. Brown beginning on page 1153 and ending on page 1155.

The testimony of Charles A. Heiss beginning on page 1155 and ending on page 1177.

The testimony of George E. Folk beginning on page 1211 and ending on page 1230.

[fol. 213] The testimony of George A. Campbell beginning on page 1230 and ending on page 1239.

The testimony of John Edward Otterson beginning on page 1239 and ending on page 1256.

The testimony of R. H. Gregory beginning on page 1274 and ending on page 1277.

The testimony of W. F. Sloan beginning on page 1297 but omitting the last six lines on that page; and the further testimony of said witness beginning on page 1315 with the fourth line from the bottom and ending on page 1318 with the eleventh line from the bottom.

The testimony of R. H. Gregory beginning on page 1330 and ending on page 1351.

The testimony of F. M. Williams beginning on page 1351 and ending on page 1354.

The testimony of Allen G. Hoyt beginning on page 1355 and ending on page 1366.

The testimony of F. M. Williams appearing on page 1367.

The testimony of R. H. Gregory beginning on page 1367 and ending on page 1378.

[fol. 214] The testimony of William H. Egan beginning on page 1379 and ending on page 1384; and the further testimony of said witness appearing on page 1401.

The testimony of James Campbell Burton appearing on page 1402.

The testimony of Allan B. Crunden beginning on page 1403 and ending on page 1421.

The testimony of W. F. Sloan beginning on page 1421 and ending on page 1424.

The testimony of Allan B. Crunden beginning on page 1434 and ending on page 1437.

The testimony of G. W. Cummings beginning on page 1439 and ending on page 1589.

The testimony of John S. Hagberg beginning on page 1589 and ending on page 1614.

The testimony of George B. McCann beginning on page 1614 and ending on page 1687.

The testimony of R. C. Rainwater beginning on page 1687 and ending on page 1710.

[fol. 215] The testimony of W. M. Hammond beginning on page 1738 and ending on page 1750.

The testimony of R. C. Rainwater beginning on page 1750 and ending on page 1760; and the further testimony of said witness beginning on page 1773 and ending on page 1828.

The testimony of Charles R. Whitworth beginning on page 1833 and ending on page 1841.

The testimony of George B. McCann beginning on page 1844 and ending on page 1870.

The testimony of W. M. Hammond beginning on page 1871 and ending on page 1880.

The testimony of George B. McCann beginning on page 1901 and ending on page 1912.

The testimony of R. C. Rainwater beginning on page 1912 and ending on page 1921.

The testimony of J. G. Wray beginning on page 1921 and ending on page 1992; and the further testimony of said witness begining on page 2012 and ending on page 2024.

[fol. 216] The testimony of R. C. Rainwater beginning on page 2024 and ending on page 2046.

The testimony of W. M. Hammond beginning on page 2047 and ending on page 2051 with line 8.

The stipulation relating to the R. C. Rainwater exhibits beginning on page 2051 with line 9 and ending on page 2052 with line 22.

The testimony of Harold D. Arnold beginning on page 2104 and ending on page 2119.

The testimony of Lyman F. Morehouse beginning on page 2120 and ending on page 2129.

The testimony of Otto Bernard Blackwell beginning on page 2129 and ending on page 2143.

The testimony of Dr. Frank B. Jewett beginning on page 2143 and ending on page 2165.

The testimony of John G. Roberts beginning on page 2165 and ending on page 2167.

[fol. 217] The testimony of Frank B. Jewett beginning on page 2167 and ending on page 2202.

The testimony of Theodore G. Miller beginning on page 2203 and ending on page 2212.

The testimony of Cajetan Morsack beginning on page 2212 and ending on page 2216.

The testimony of James J. Pilliod beginning on page 2216 and ending on page 2218 with line 5.

The testimony of Harry H. Carter beginning on page 2222 and ending on page 2228.

The testimony of Clyde Uhrig beginning on page 2228 and ending on page 2236.

The testimony of Pierre W. Saxton beginning on page 2236 and ending on page 2242.

The testimony of Bancroft Gherardi beginning on page 2242 and ending on page 2251.

The testimony of Pierre W. Saxton beginning on page 2252 and ending on page 2267.

[fol. 218] The testimony of Clyde Uhrig beginning on page 2267 and ending on page 2269.

The testimony of James F. Behan beginning on page 2269 and ending on page 2272.

The testimony of Edgar S. Bloom beginning on page 2272 and ending on page 2281.

The testimony of Arthur W. Page beginning on page 2282 and ending on page 2289.

The testimony of Edgar S. Bloom appearing on page 2289.

The testimony of Pierre W. Saxton beginning on page 2290 and ending on page 2292.

The testimony of James F. Behan beginning on page 2292 and ending on page 2294.

The testimony of Clyde Uhrig beginning on page 2294 and ending on page 2295.

The testimony of Seymour L. Andrew beginning on page 2295 and ending on page 2304.

[fol. 219] The testimony of Harry H. Carter beginning on page 2304 and ending on page 2312.

The testimony of Cajetan Morsack beginning on page 2312 and ending on page 2314.

The testimony of Robert W. Burgess appearing on page 2315.

The testimony of Daniel C. Collins beginning on page 2315 and ending on page 2316.

The testimony of Cajetan Morsack beginning on page 2316 and ending on page 2319.

The testimony of Harry H. Carter beginning on page 2319 and ending on page 2320.

The testimony of Pierre W. Saxton appearing on page 2320.

The testimony of Cajetan Morsack beginning on page 2320 and ending on page 2321.

[fol. 220] (37) Include in said transcript the following portions of the record in the so-called toll case, otherwise known as Advanced Utility Rate Proceeding No. 124 on the docket of said Commission and entitled: "In re: Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio Filed to Become Effective January 21, 1924" which was consolidated into said company-wide case No. 3307:

The caption and appearances on page 2.

The testimony of F. L. Rhodes beginnning on page 197 and ending on page 429.

The testimony of A. J. Allen beginning on page 430 and ending on page 517.

The testimony of A. B. Crunden beginning on page 518 and ending on page 652.

The testimony of Cyrus S. Eaton beginning on page 653 and ending on page 714.

The testimony of A. B. Crunden beginning on page 715 and ending on page 782.

[fol. 221] The testimony of W. F. Sloan beginning on page 784 and ending on page 905.

The testimony of W. T. Anthony beginning on page 986 and ending on page 1033.

The testimony of Benjamin T. McBurney beginning on page 1034 and ending on page 1053.

The testimony of G. A. Kositzky beginning on page 1054 and ending on page 1074.

The testimony of Benjamin T. McBurney beginning on page 1075 and ending on page 1078.

The testimony of G. A. Kositzky beginning on page 1079 and ending on page 1207 with line 10.

The testimony of F. L. Rhodes beginning on page 1229 and ending on page 1359.

The testimony of G. A. Kositzky beginning on page 1360 and ending on page 1534.

[fol. 222] The testimony of A. B. Crunden beginning on page 1535 and ending on page 1685.

The testimony of A. J. Allen beginning on page 1686 and ending on page 1849.

The testimony of W. T. Anthony beginning on page 1850 and ending on page 1883.

The testimony of E. V. Cox beginning on page 1885 and ending on page 2001.

The testimony of W. T. Anthony beginning on page 2003 and ending on page 2146.

(38) Include also in said transcript all of the oral testimony in the record in the so-called "Service Connection Charge Case", it being No. 1728 on the docket of said Commission entitled: "In the Matter of the Investigation by the Commission Upon Its Own Initiative In Re: Service Connection Charges and Charges for Moves and Changes of Telephone Companies" which was consolidated by said Commission into said company-wide case No. 3307.

[fol. 223] (39) Include also in said transcript the following exhibits or portions thereof from said company-wide case No. 3307:

Allen Exhibit A1.
Allen Exhibit A2.
Allen Exhibit A3.
Allensworth Exhibit 1.
Allensworth Exhibit 2.
Allensworth Exhibit 3.
Allensworth Exhibit 4.
Allensworth Exhibit 5a.
Allensworth Exhibit 6.
Allensworth Cross-examination Exhibit 1.
Anthony Exhibit A4.
Brett Exhibit 1.
Brett Exhibit 2.
Brett Exhibit 3.
Brett Exhibit 4.
Brett Exhibit 5.
Brett Exhibit 6.
Brett Exhibit 7.
Brett Exhibit 8.
Brett Exhibit 9.

[fol. 224]

Central Office Exhibit 1.
Company Exhibit A.
Company Exhibit X2.
Company Exhibit X3.
Company Exhibit AA1.
Company Exhibit AA2.
Company Exhibit AA3.
Commission Exhibit A1A.
Cooper Exhibit A1.
Cooper Exhibit A2.
Cooper Exhibit A3.
Cooper Exhibit A4.
Cooper Exhibit A5.
Cooper Exhibit A1A.
Cox Exhibit A1.
Cox Exhibit A2.
Cox Exhibit A3.
Cox Exhibit A4.
Cox Exhibit A5.
Cox Exhibit A6.
Cox Exhibit A7.
Cox Exhibit A8.
Cox Exhibit A9.
Cox Exhibit A10.
Crunden Exhibit A1.
Crunden Exhibit A2.

[fol. 225]

Crunden Exhibit A3.
Dorsey Exhibit 1.
Dorsey Exhibit 2.
Dorsey Exhibit 3.
Dorsey Exhibit 4.
Dorsey Exhibit 5.
Dorsey Exhibit 6.
Dorsey Exhibit 7.
Dorsey Exhibit 8.
Eide Exhibit 1.
Eide Supplemental Exhibit 1.
Eide Exhibit 2.
Eide Exhibit 3.
Eide Exhibit 4.
Gregory Exhibit 1.
Gregory Exhibit 2.
Gregory Exhibit 3.
Gregory Exhibit 4.
Gregory Exhibit 5.
Gregory Exhibit 6.
Gregory Exhibit 7.
Hagenah Exhibit 1.
Hagenah Exhibit 2.
Hagenah Exhibit 3.
Hagenah Exhibit 4.
Hagenah Exhibit 5.
Hagenah Exhibit 7.

[fol. 226]

Heiss Exhibit 9.
Heiss Exhibit 10.
Heiss Exhibit 11.
Heiss Exhibit 12.
Heiss Exhibit 13.
Heiss Exhibit 14.
Heiss Exhibit 15.
Heiss Exhibit 16.
Heiss Exhibit 17.
Heiss Exhibit 18.
Heiss Exhibit 19.
Heiss Exhibit 20.
Heiss Exhibit 21.
Heiss Exhibit 22.
Heiss Exhibit 23.
Heiss Exhibit 24.
Heiss Exhibit 25.
Heiss Exhibit 26.
Heiss Exhibit 27.
Hogan Exhibit 3.
Hogan Exhibit 5.
Hogan Exhibit 9.
Hogan Exhibit 10.
Kositzky Exhibit A1.
Kositzky Exhibit A20.
Kositzky Exhibit A21.
Kositzky Exhibit A31.
Kositzky Exhibit A32.
Kositzky Exhibit A33.
Kositzky Exhibit A34.

[fol. 227]

Kositzky Exhibit A35.
McBerty Exhibit 1.
McBerty Exhibit 2.
McBerty Exhibit 3.
Morse Exhibit 1.
Morse Exhibit 5.
Morse Exhibit 12.
Morse Exhibit 13.
Morse Exhibit 14.
Morse Exhibit 15.

Myers Exhibit 1 omitting only the descriptive detail as to the location of the buildings.

Myers Exhibit 3.
Rhodes Exhibit A1.
Rhodes Exhibit A2.
Rhodes Exhibit A4.
Rhodes Exhibit A5.
Rhodes Exhibit A6.

Schneider Exhibit 1 including only parts 1 and 2 with their respective cover pages.

Schneider Exhibit 2.
Schneider Exhibit 3.
Schneider Exhibit 4.
Schneider Exhibit 5.
Schneider Exhibit 6.
Schneider Exhibit 7.
Schneider Exhibit 8.
Schneider Exhibit 9.
Schneider Exhibit 10.
Schneider Exhibit 11.

[fol. 228]

Schneider Exhibit 12.
Schneider Exhibit 13.
Schneider Exhibit 20.
Schneider Exhibit 21.
Stephens Exhibit 1.
Stephens Exhibit 2.
Stephens Exhibit 4.
Stephens Exhibit 5.
Sloan Exhibit A1.
Spring Exhibit 1.
Uprichard Exhibit 1.
Uprichard Exhibit 1A.
Uprichard Exhibit 2.
Uprichard Exhibit 3.
Uprichard Exhibit 4.
Uprichard Exhibit 5.
Uprichard Exhibit 6.
Uprichard Exhibit 6A.
Uprichard Exhibit 6B.
Uprichard Exhibit 6C.
Uprichard Exhibit 6D.
Uprichard Exhibit 6E.
Uprichard Exhibit 6F.
Uprichard Exhibit 6G.
Uprichard Exhibit 13.
Uprichard Exhibit 14.

[fol. 229]

Uprichard Exhibit 15.
Uprichard Exhibit 16.
Williams Exhibit 1.
Williams Exhibit 2.

Williams Exhibit 3A, pp. 198 and 199.
Williams Exhibit 3B, pp. 140 to 146 inclusive, omitting only the last 3 lines on page 146; and pages 147 and 148, omitting only the last 3 lines on page 148.

Williams Exhibit 7A.
Williams Exhibit 7B.
Williams Exhibit 7C.
Williams Exhibit 8.
Williams Exhibit 9.
Williams Exhibit 10.
Williams Exhibit 11.
Williams Exhibit 12.
Williams Exhibit 14.

Williams Exhibit 16 including only page 1.

Wilson Exhibit 1.
Wilson Exhibit 2.
Wood Exhibit 1.
Wood Exhibit 2.
Wood Exhibit 3.
Wood Exhibit 4.
Wood Exhibit 5.
Wood Exhibit 6.
Wood Exhibit 7.
Wood Exhibit 8.
Wood Exhibit 9.

[fol. 230]

Wood Exhibit 9A.
Wood Exhibit 9B.
Wood Exhibit 10.
Wood Exhibit 11.
Wood Exhibit 12.
Wood Exhibit 13.
Wood Exhibit 14.
Wood Exhibit 15.
Wood Exhibit 16.
Wood Exhibit 17.
Wood Exhibit 18.
Wood Exhibit 19.
Wood Exhibit 20.
Wood Exhibit 21.
Wood Exhibit 22.

Report to the Commission by E. W. Wood of August 11, 1934.

(40) The following from the record of said cause No. 3307:

(a) Exhibits prepared by Richard H. Gregory in accordance with requests made at hearings of June 17th and 18th, 1931 numbered 1 to 12 inclusive, 14 and 15, and 17 to 19 inclusive, and including of No. 1 both the original and the revised Exhibit.

(b) Exhibits prepared by Charles A. Heiss in accordance with request made at hearing of June 19, 1931 and numbered 1 to 12 inclusive.

[fol. 231] (c) Commission's order of April 22, 1932 with reference to the several requests of special counsel for the Commission.

(d) Response of Appellant of May 7, 1932 to Commission's order of April 22, 1932.

(e) Appellant's additional responses numbered 5, 7, 10, and 13 to said several requests, including only the final copy of response 5.

(f) Exhibits showing gross additions to plant 1925 to 1931 and other data filed with the Commission November 2, 1932 in response to requests 1 to 5 of special counsel for the Commission of October 22, 1932.

(g) Monthly cash statements of Western Electric Company for the years 1916 to 1930 inclusive.

(h) Responses made January 10, 1933 to the Commission's request of December 30, 1932 they being (Ex. A, so marked by the Commission) additions, retirements and charges to depreciation reserve, four exchanges and (Ex. B, so marked by the Commission) the number of stations in the Akron and Dayton exchange area from January 1, 1925 to 1932 inclusive.

[fol. 232] (i) Responses to the Commission's request of August 24, 1933 including:

(1) Comparative Balance Sheet June 30, 1925 and June 30, 1932;

(2) Recapitulation of assets and liabilities June 30, 1925 and June 30, 1932;

(3) Net additions June 30, 1925 to June 30, 1932 (including references to Commission's orders authorizing reimbursement of the treasury);

(4) Statement of mortgage notes assumed on property purchased.

(j) Letter of September 15, 1933 from the Commission to Karl E. Burr, General Counsel for The Ohio Bell Telephone Company, requesting certain data; Mr. Burr's response of September 20, 1933 and the four accompanying statements as set forth in said letter.

(k) The letter of June 14, 1933 from the Commission to Karl E. Burr requesting 12 statements; Mr. Burr's response of June 21, 1933 and the 12 statements enclosed; and Mr. Burr's letter to the Commission of July 26, 1933.

(l) A tabulation of 60 pages submitted to the Commission by appellant, as follows:

(1) Rates for exchange service;

(2) Revisions in toll rates effective October 1, 1926;

(3) Tariff schedules in effect January 1, 1934 under bond;

(4) Tariff schedules in effect January 1, 1934 not under bond.

[fol. 233] (m) Appellant's monthly reports 2 to 6 inclusive as of November 30, 1933.

(n) Revenue, expense and rate data filed April 17, 1934 in response to the Commission's order of March 1, 1934, together with the transmittal letter of The Ohio Bell Telephone Company addressed to the Commission of April 17, 1934 and the further letter of the Company to the Commission of the same date.

(o) Letter of August 12, 1933 from The Ohio Bell Telephone Company to The Public Utilities Commission of Ohio relative to the separate cases and the Commission's letter of acknowledgment of August 21, 1933 addressed to Karl E. Burr, General Counsel of The Ohio Bell Telephone Company.

(p) Letter of December 22, 1933 from The Ohio Bell Telephone Company to The Public Utilities Commission and the Commission's acknowledgment of December 28, 1933 addressed to Karl E. Burr.

(q) Letter of The Public Utilities Commission to Karl E. Burr of March 23, 1933 and Mr. Burr's reply to Commissioner Geiger of April 3, 1933.

[fol. 234] (41) Include also in said transcript the following exhibits or portions thereof originally introduced in the case of Illinois Bell Telephone Company v. Gilbert, and by stipulation made part of the record in said Cause No. 3307, to-wit:

Exhibit A-66.
" A-67.
" A-75.
" A-76.
" A-77.
" A-78,
" A-79.
" A-80.
" A-81.
" A-82.
" A-83.
" A-84.
Exhibit A-85.
" A-86.
" A-87.
" A-88-B.
" A-90-B.
" A-91.
" A-92.
" A-93-B.
" A-94-B.
" A-95-B.
" A-96-B.

[fol. 235]

" A-99.
" A-100.
" A-101-B.
" A-103.
" A-108-B.
" A-109.
" A-110.
" A-111.
" A-112-B.
" A-113-B.
" A-114.
" A-115.
" A-116.
" A-117-B.
" A-118-B.
" A-119-B.
" A-120.
" A-121-B.
" A-122.
" A-123.

Exhibit A-124-B.
" A-146.
" A-147.
" A-148.
" A-150-B.
" A-151-B.
" A-152-B.
" A-153-B.
" A-154-B.

[fol. 236]

" A-155-B.
" A-156-B.
" A-157-B.
" A-158-B.
" A-159-B.
" A-160-B.
" A-161-B.
" A-162-B.
" A-163-B.
" A-164.
" A-165.
" A-166-B.
" A-167-B.
" A-168-B.
" A-169-B.
" A-170-B.
" A-171.
" A-172.
" A-174-B.
" A-175-B.
" A-179-B.
" A-193.
" A-194.
" A-196.
" A-197-B.
" A-198.
" A-199.
" A-200-B.
" A-201-B.
" A-202.

[fol. 237]

" A-208.
" A-216.
" A-217.
" A-227.
" A-228.
" A-229.
" A-230.
" A-231.
" A-233.
" A-255.
" A-256.
" A-257.
" A-258.
" A-259.
" A-260.
" A-261.
" A-269-a.
" A-271.
" D-19.
" D-25.
" D-26.
" D-27.
" D-28.
" D-29.
" D-30.
" D-31.
" D-32.

[fol. 238]

" D-33.
" D-34.
" D-35.
" D-36.
" D-38.
" D-39.

Exhibit D-41.
" D-42.
" D-46.
" D-47.
" D-48.
" D-49.
" D-50.
" D-51.
" D-52.
" D-53.
" D-54.

Exhibit D-55.
" D-56.
" D-61.
" D-62.
" D-63.
" D-64.
" D-65.
" D-66.
" D-68.
" D-69.

[fol. 239]

" D-70.
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" D-102.
" D-103.
" D-104.

[fol. 240]

" D-111.
" D-112.
" D-116.
" D-122.
" D-135.
" D-136.
" D-137.
" X-13-A.
" X-13-B.
" X-14.
" X-15.
" X-16.

" X-34.
" X-35.
" X-36.
" X-37.
" X-38.
" X-39.
" X-40.
" X-41.
" X-42.
" X-43.
" X-44.
" X-45.

Exhibit X-46.
" X-47.
" X-47-A.

[fol. 241]

" X-49-A.
" X-50.
" X-50-A.
" X-55.
" X-67.
" X-69.
" X 70.
" X-71.
" X-72.
" X-73.
" X-74-A.
" X-75.
" X-76.
" X-77.
" X-79.
" X-80.

Exhibit X-48.
" X-49.
" X-49-½.

" X-81.
" X-82.
" X-83.
" X-83-A.
" X-88.
" X-89.
" X-90.
" X-91.
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" X-96.
" X-97.
" X-99.

[fol. 242]

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" X-112.
" X-121.
" X-148.
" X-192.
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" X-198.
" X 200.

" X-207.
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" X-211.
" X-217.
" X-222.
" X-225.
" X-227.
" X-228.
" X-229.
" X-231.
" X-232.
" X-233.
" X-234.
" X-235.
" X-236.

[fol. 243]

" X-237.
" X-238.

" X-239.
" X-240.

Exhibit X-241.
" X-242.
" X-243.
" X-244.
" X-245.
" X-246.
" X-247.
" X-248.
" X-249.
" X-250.
" X-251.
" X-252.
" X-253.
" X-254.

Exhibit X-255.
" X-256.
" X-257.
" X-258.
" X-259.
" X-260.
" X-261.
" X-262.
" X-263.
" X-294.
" X-295, pp. 1, 2, 14, 15 and 19.
" X-307.

[fol. 244]

" X-315.
" X-316.
" X-317.
" X-317-A.
" X-319.
" X-321.
" X-322.
" X-335.
" X-343.
" X-348.
" X-353.
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" X-375.
" X-378.
" X-379.

[fol. 245]

" X-380.
" X-381.
" X-382.
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" X-385.
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" X-388.
" X-390.
" X-391.

" X-392.
" X-393.
" X-394.
" X-397.
" X-398.
" X-420.
" X-422.
" X-433.
" X-434.

Include also in said transcript the following deposition exhibits from said Chicago case:

1	6	8	10
4	7	9	11
5			

[fol. 246]

12	32	44	66
18	34	45	67
20	38	46	68
21	39	47	69
22	40	48	70
26	41	49	71
28	42	50	
31	43	50-B	

[fol. 247]

72	111	149	170
73	119	152	114
74	132	155	173
75	134	158	176
76	139	161	179
77	142	164	188
110	146	169	189

[fol. 248]

190	193	197	204
191	195	202	205
192	196		

(42) Include also in said transcript the following exhibits from the so-called toll case, otherwise known as Advanced Utility Rate Proceeding, No. 124:

Cox Exhibit 10.	Crunden Exhibit 11.
Cox Exhibit 11.	Crunden Exhibit 12.
Cox Exhibit 12.	Kositzky Exhibit 2.
Cox Exhibit 13.	Kositzky Exhibit 13.
Cox Exhibit 14.	Kositzky Exhibit 26.
Cox Exhibit 15.	Kositzky Exhibit 28.
Crunden Exhibit 2.	Kositzky Exhibit 30.

[fol. 249]

Kositzky Exhibit 31.	Kositzky Exhibit 33.
Kositzky Exhibit 32.	Rhodes Exhibit 3.

Rhodes Exhibit 83.	Rhodes Exhibit 88.
Rhodes Exhibit 84.	Sloan Exhibit 1.
Rhodes Exhibit 87.	Sloan Exhibit 1A.

(43) Include also in said transcript the following exhibits from the so-called "Service Connection Charge Case", it being cause No. 1728 on the docket of said Commission and consolidated into said company-wide case No. 3307:

Cooper Exhibit 6.	Cooper Exhibit 11.
Cooper Exhibit 9.	Cooper Exhibit 12.
Cooper Exhibit 10.	Cooper Exhibit 13.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.

Service of the foregoing and receipt of a copy thereof at Columbus, O., this 14th day of October, 1936, are hereby acknowledged.

John W. Bricker, Attorney General of Ohio; Donald C. Power, Attorneys for Appellee. The Public Utilities Commission of Ohio, by E. J. Hopple, Chairman.

[fol. 249½] [File endorsement omitted.]

[fol. 250] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION No. 1—Filed October 14, 1936

The parties in the above entitled cause agree:

1. That they, the parties hereto, will not raise any question in this cause in the United States Supreme Court with respect to the separation of appellant's property, its revenues, expenses and net income as between intra and interstate.

2. That the following evidence which is not material to a determination of this appeal shall be omitted from the record in this cause:

(a) All evidence in the separate rate case proceedings before the Commission taken prior to the commencement of

the company-wide hearing in Consolidated Cause No. 3307 except such parts of the evidence in A. U. R. P. No. 124 and in case No. 1728 as either party may designate;

(b) All evidence in respect of the Pension Fund Plans of the American Telephone and Telegraph Company, the Western Electric Company and The Ohio Bell Telephone Company, and the reasonableness of the accruals made thereunder.

[fol. 251] By signing this or any other stipulation the appellee shall not be considered to have waived, except in respect of the subject matters and omissions embraced in such stipulations, any right to raise any question of jurisdiction in the prosecution of this appeal or subsequently to challenge the prosecution of this appeal upon any ground.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.
Donald C. Power, Attorney for Appellee.

10/14/36.

[fol. 251½] [File endorsement omitted.]

[fol. 252] In Supreme Court of the United States

[Title omitted]

Stipulation No. 2—Filed October 14, 1936

Whereas certain exhibits admitted in evidence in Illinois Bell Telephone Company vs. Gilbert were made part of the record in this cause by stipulation of the parties; and

Whereas for the purpose of reducing the size of the record in that case some of said exhibits were in part abbreviated and in part reduced to narrative form in the record as certified to the Supreme Court of the United States upon the appeal of said cause sub nomine Lindheimer vs. Illinois Bell Telephone Company,

Now, Therefore, for the purpose of (a) reducing the size of the record upon appeal in this cause, (b) reducing the labors of the Clerk of the Supreme Court of Ohio in making a true copy of the record upon appeal herein, and (c) reducing the possibilities of error involved in transcribing

and making copies of said record, it is hereby stipulated and [fol. 253] agreed by the parties hereto that:

1. Each such exhibit which was so abbreviated or reduced to narrative form in the record filed in the Supreme Court of the United States upon the appeal of said Illinois Bell Telephone Company vs. Gilbert sub nomine Lindheimer vs. Illinois Bell Telephone Company may for the purposes of the record upon appeal in the present cause be similarly abbreviated and narrated.

2. The printed copies of such exhibits herewith delivered to the Clerk of the Supreme Court of Ohio by appellant or appellee for inclusion in the record upon appeal in the present cause are true and exact copies of said exhibits as so abbreviated and narrated and for all purposes shall be deemed to be true and exact copies of said exhibits as admitted in evidence in the present cause.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Counsel for Appellant.
John W. Bricker, Donald C. Power, Counsel for Appellee.

Dated October 14, 1936.

Approved: Carl V. Weygandt, Chief Justice, Supreme Court of Ohio.

[fol. 253½] [File endorsement omitted.]

[fol. 254] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION No. 3—Filed October 14, 1936

It is hereby stipulated and agreed between the parties hereto as follows:

(1) On or about November 29, 1920, in the cause entitled "In the Matter of the Central Union Telephone Company's new schedule designated P. U. C. O. No. 5 applying to Lancaster exchange, filed to become effective December 1, 1920, Advanced Utility Rate Proceeding No. 40." the Public Utilities Commission of Ohio entered an order, a true copy

[fol. 255] of which is hereto attached, marked as "Exhibit 1."

(2) On or about November 29, 1920, the Central Union Telephone Company (later succeeded by The Ohio Bell Telephone Company) filed with the Public Utilities Commission of Ohio in said cause its application and bond, true copies of which are hereto attached, marked respectively "Exhibit 2" and "Exhibit 3".

(3) On or about November 29, 1920, the Public Utilities Commission of Ohio entered an order in said cause, a true copy of which is hereto attached, marked "Exhibit 4", and thereafter hearings were had and pertinent evidence adduced in said cause.

(4) On or about December 15, 1920, the Public Utilities Commission of Ohio "In the Matter of the proposed increased rates of the Central Union Telephone Company for local exchange service, Ripley, Ohio, Advanced Utility Rate Proceeding No. 42", entered an order, a true copy of which is hereto attached, marked "Exhibit 5".

[fol. 256] (5) On or about December 16, 1920, the Central Union Telephone Company filed with said Commission in said cause its application and bond, true copies of which are hereto attached, marked respective- "Exhibit 6" and "Exhibit 7."

(6) On or about December 16, 1920, the Public Utilities Commission of Ohio entered an order in said cause a true copy of which is hereto attached, marked "Exhibit 8," and thereafter hearings were had and pertinent evidence adduced in said cause.

(7) On or about September 17, 1921, the Public Utilities Commission of Ohio entered an order effecting the consolidation of two formerly constituent telephone companies into The Ohio Bell Telephone Company, the appellant herein. A true copy of said order is hereto attached marked "Exhibit 9".

(8) On or about January 18, 1924, the Public Utilities Commission of Ohio entered an order in Advanced Utility Rate Proceeding No. 124, a true copy of which order is hereto attached, marked "Exhibit 10"; and on various [fol. 257] other dates said Commission made similar orders

of like effect in respect of the following advanced utility rate proceedings:

In re Proposed increased rates for service at Lancaster, A.U.R.P. No. 40,

In re Proposed increased rates for service at Ripley, A.U.R.P. No. 42,

In re Proposed increased rates for service at Massillon, A.U.R.P. No. 132,

In re Proposed increased rates for service at Youngstown, A.U.R.P. No. 135,

In re Proposed increased rates for service at Marietta, A.U.R.P. No. 136,

In re Proposed increased rates for service at Middletown, A.U.R.P. No. 137,

In re Proposed increased rates for service at Akron and Barberton, A.U.R.P. No. 138,

In re Proposed increased rates for service at Dayton, A.U.R.P. No. 141,

In re Proposed increased rates for service at Cleveland, A.U.R.P. No. 142,

In re Proposed increased rates for service at Piqua, A.U.R.P. No. 143,

In re Proposed increased rates for service at Steubenville, A.U.R.P. No. 146,

In re Proposed increased rates for service at Niles, A.U.R.P. No. 147,

In re Proposed increased rates for service at Girard, A.U.R.P. No. 149,

In re Proposed increased rates for service at Toledo, A.U.R.P. No. 139,

In re Proposed increased rates for service at Toronto, A.U.R.P. No. 156,

In re Proposed increased rates for service at East Palestine, A.U.R.P. No. 157,

In re Proposed increased rates for service at South Charleston, A.U.R.P. No. 159,

In re Proposed increased rates for service at Alton, A.U.R.P. No. 160,

In re Proposed increased rates for service at Gahanna, A.U.R.P. No. 161,

In re Proposed increased rates for service at Worthington, A.U.R.P. No. 162,

In re Proposed increased rates for service at New Albany, A.U.R.P. No. 163,
In re Proposed increased rates for service at Dublin, A.U.R.P. No. 164,
In re Proposed increased rates for service at Galloway, A.U.R.P. No. 165,
In re Proposed increased rates for service at Harrisburg, A.U.R.P. No. 166,
In re Proposed increased rates for service at Hilliards, A.U.R.P. No. 167,
[fol. 258] In re Proposed increased rates for service at Lockbourne, A.U.R.P. No. 168,
In re Proposed increased rates for service at Reynoldsburg, A.U.R.P No. 169,
In re Proposed increased rates for service at Groveport, A.U.R.P. No. 170,
In re Proposed increased rates for service at Pickerington, A.U.R.P. No. 171, and
In re Proposed increased rates for service at South Solon, A.U.R.P. No. 172

(9) On or about April 14, 1924, said appellant filed with the Public Utilities Commission of Ohio its application and bond in respect of said suspended schedule of toll rates in said Advanced Utility Rate Proceeding No. 124, true copies of said application and bond being hereto attached, marked respectively "Exhibit 11" and "Exhibit 12"; and on various other dates appellant filed similar applications and bonds in the other advanced utility rate proceedings set forth in detail in the next preceding paragraph of this stipulation.

(10) On or about April 15, 1924, the Public Utilities Commission of Ohio entered an order in said Advanced Utility Rate Proceeding No. 124, a true copy of which is hereto attached, marked "Exhibit 13", followed by hearings had and pertinent evidence adduced in said cause, and on va-[fol. 259] rious other dates entered similar orders of like effect in respect of the application and bonds of said appellant filed in said other advanced utility rate proceedings set forth in detail in paragraph 8 above.

(11) The said orders of the Commission in said three proceedings hereinabove set forth were entered pursuant to the provisions of Section 614-20 of the General Code

(known as the "Robinson Law" when the proceedings shown in paragraphs 1 to 6 hereof were had and thereafter as the "Pence Law") which authorized increases in the rates of public utilities by filing schedules of the same with the Commission, with the right in the Commission to suspend the same upon its own motion or upon protest and authorized the utility to make said rates effective under bond provided the hearing in respect of the reasonableness of the same could not be concluded within the suspension period provided by said Section 614-20.

(12) On or about October 14, 1924, the Public Utilities Commission of Ohio entered an order inaugurating Consolidated Cause No. 3307 on its docket, a true copy of which is as follows:

[fol. 260] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the matter of the investigation and inquiry of The Public Utilities Commission of Ohio, upon its own motion, for the determination (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and exchange, (b) of the just and reasonable rates and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio.

The Commission having heretofore, by formal resolution, determined to enter upon a state-wide investigation of the valuation, rates, charges and services of the various telephone companies operating within the State of Ohio, and it appearing that there are now pending before the Commission separate rate cases of The Ohio Bell Telephone Company involving not only the exchange rates in the respective communities and known and designated and numbered on the dockets of this Commission as follows:

In re Application for determination of rates for unified service in Lancaster, Ohio, exchange area, No. 2367-S 1,

In re Application for determination of rates for unified service in Massillon, Ohio, exchange area, No. 2367-S 12,

In re Application for determination of rates for unified service in Dayton, Ohio, exchange area, No. 2367-S 17,

In re Application for determination of rates for unified service in Canton, Ohio, exchange area, No. 2367-S 18,

In re Application for determination of rates for unified service in Akron, Cuyahoga Falls and Tallmadge exchange areas, No. 2367-S 22,

In re Application for determination of rates for unified service in Barberton, Ohio, exchange area, No. 2367-S 23,

In re Application for determination of rates for unified service in Canal Winchester, Ohio, exchange area No. 2367-S 26,

In re Application for determination of rates for unified service in Youngstown, Ohio, exchange area, No. 2367-S 27,

In re Application for determination of rates for unified service in Toledo, Ohio, exchange area, No. 2367-S 28,

In re Complaint of the Village of Hubbard vs. The Ohio Bell Telephone Company, No. 3181,

In re Rates of The Ohio Bell Telephone Company for service in Columbus, Ohio, exchange area, Nos. 1368 and 1900.

In re Service connection charges of The Ohio Bell Telephone Company, No. 1728,

[fol. 261] In re Proposed increased rates for service at Lancaster, A.U.R.P. No. 40,

In re Proposed increased rates for service at Ripley, A.U.R.P. No. 42,

In re Proposed increased rates for service at Massillon, A.U.R.P. No. 132,

In re Proposed increased rates for service at Youngstown, A.U.R.P. No. 135,

In re Proposed Increased rates for service at Marietta, A.U.R.P. No. 136,

In re Proposed increased rates for service at Middletown, A.U.R.P. No. 137,

In re Proposed increased rates for service at Akron and Barberton, A.U.R.P. No. 138,

In re Proposed increased rates for service at Dayton, A.U.R.P. No. 141,
In re Proposed increased rates for service at Cleveland, A.U.R.P. No. 142,
In re Proposed increased rates for service at Piqua, A.U.R.P. No. 143,
In re Proposed increased rates for service at Steubenville, A.U.R.P. No. 146,
In re Proposed increased rates for service at Niles, A.U.R.P. No. 147,
In re Proposed increased rates for service at Girard, A.U.R.P. No. 149,
In re Proposed increased rates for service at Toledo, A.U.R.P. No. 139,
In re Proposed increased rates for service at Toronto, A.U.R.P. No. 156,
In re Proposed increased rates for service at East Palestine, A.U.R.P. No. 157,
In re Proposed increased rates for service at South Charleston, A.U.R.P. No. 159,
In re Proposed increased rates for service at Alton, A.U.R.P. No. 160,
In re Proposed increased rates for service at Gahanna, A.U.R.P. No. 161,
In re Proposed increased rates for service at Worthington, A.U.R.P. No. 162,
In re Proposed increased rates for service at New Albany, A.U.R.P. No. 163,
In re Proposed increased rates for service at Dublin, A.U.R.P. No. 164,
In re Proposed increased rates for service at Galloway, A.U.R.P. No. 165,
In re Proposed increased rates for service at Harrisburg, A.U.R.P. No. 166,
In re Proposed increased rates for service at Hilliards, A.U.R.P. No. 167,
In re Proposed increased rates for service at Lockbourne, A.U.R.P. No. 168,
In re Proposed increased rates for service at Reynoldsburg, A.U.R.P. No. 169,
In re proposed increased rates for service at Groveport, A.U.R.P. No. 170,

[fol. 262] In re Proposed increased rates for service at Pickerington, A.U.R.P. No. 171, and
In re Proposed increased rates for service at South Solon, A.U.R.P. No. 172,

but also the toll rates of said company for the entire state (In re: Proposed increased rates of The Ohio Bell Telephone Company for toll service, A.U.R.P. No. 124),

And it further appearing that the determination of any so-called "local rate" does not solve the same question arising in other local subdivisions, and that, in all probability, the interest of the public will be best served, that just and reasonable rates be fixed and determined for the service of said company, not only in said communities, but also in all of the other communities served by said company in the state, and in the state as a whole, to the end that the telephone users in all the said communities shall have the lowest possible rates, exchange and toll, consistent with good service and a fair return to the company.

And it appearing further that in all of said cases now pending before the Commission the important issues are identical, such that a single, consolidated case would determine the same for all of the rates, charges and services of said company in the state, at a minimum expenditure of time and money on the part of both the communities interested in said rates and the Commission, it is hereby

Ordered, That the Public Utilities Commission of Ohio, upon its own motion, and without complaint or other pleadings, inaugurate and enter upon a hearing and investigation of all the rates, joint rates, tolls, charges, rentals, classifications and practices, service and property valuation (toll and exchange), of said The Ohio Bell Telephone Company in the State of Ohio, and, to this end, it is further

Ordered, That all pending cases, as hereinabove enumerated, involving the above questions, wherein The Ohio Bell Telephone Company is a party, be, and they are hereby consolidated in this proceeding, and the evidence heretofore introduced in said cases shall be considered and made a part of the record in this case; reserving the right to the parties interested in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit. It is further

Ordered, That, on or before December first, Nineteen Hundred and Twenty four, said The Ohio Bell Telephone Company furnish to this Commission and file in this cause, as a part of the evidence therein, a complete inventory of all of its property located in the State of Ohio and used and useful and to be used and useful, in the furnishing of telephone service therein, both toll and exchange, classified according to the classification adopted and prescribed by this Commission and the Interstate Commerce Commission for telephone companies, and that, upon the filing of such [fol. 263] inventory, this consolidated case proceed to a hearing for the determination of the fair value of said property and of the just and reasonable rates for the service thereby to be furnished by said company to its patrons throughout the State of Ohio.

The Public Utilities Commission of Ohio. Charles C. Marshall, Chairman. George T. Poor, Frank B. Maullar, Commissioners.

Dated at Columbus, Ohio, this fourteenth day of October, 1924.

(13) From time to time after the inauguration of said consolidated case No. 3307, certain of appellant's rates for its exchange service in the exchange areas hereinafter named, respectively, were increased by new schedules of rates filed by appellant with said Commission pursuant to said Section 614-20 of the General Code; that each of said new schedules was made the subject of an advanced utility rate proceeding hereinafter referred to, and after duly entering upon hearings concerning the propriety of such increased rates, the operation of the schedule containing the same was suspended by an order of said Commission for the statutory period of 120 days (except in Advanced Utility Rate Proceeding No. 135, wherein such suspension was for the period of 60 days) from the date of the filing of such schedule; and that said Commission being unable to complete said hearings within said period, [fol. 264] in each case said schedule of increased rates went into effect after the filing by apppellant with the Commission of the bond required by it; and that thereupon each such advanced utility rate proceeding was combined by the Commission in said company wide case.

Said advanced utility rate proceedings, together with the filing dates of the schedules therein, respectively, the propose deffective dates of said schedules and the dates on which said schedules went into effect, respectively, are as follows:

Advanced Utility Rate Proceeding	Name of Exchange	Date of Filing	Proposed Effective Date	Effective Date
196	Bellaire	5- 1-25	6-1-25	9-1-25
197	Bridgeport	5- 1-25	6-1-25	9-1-25
198	Kent	5- 1-25	6-1-25	9-1-25
199	Martins Ferry	5- 1-25	6-1-25	9-1-25
204	Osborn	5-29-25	7-1-25	10-1-25
205	Canfield	7- 1-25	8-1-25	11-1-25
214	Columbus	10-31-25	12-1-25	3-1-26
218	Springfield	12- 1-25	1-1-26	4-1-26
237	Coshocton	2-29-26	7-1-26	10-1-26
238	London	5-29-26	7-1-26	10-1-26
240	Mentor	5-29-26	7-1-26	10-1-26
241	Sedalia	5-29-26	7-1-26	10-1-26
242	Washington C. H.	5-29-26	7-1-26	10-1-26
243	Westerville	5-29-26	7-1-26	10-1-26
252	Canton	9-30-26	11-1-26	2-1-27

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.
Donald C. Power, Attorney for Appellee.

10/14/36.

[fol. 265] EXHIBIT 1 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 40

In the Matter of the Central Union Telephone Company's Proposed New Schedule Designated P. U. C. O. No. 5, Applying to Lancaster Exchange, Filed to Become Effective December 1, 1920

The Central Union Telephone Company having, on the 28th day of October, 1920, filed with this Commission its schedule designated P. U. C. O. No. 5, providing certain increased rates and charges for telephone service applying to Lancaster Exchange, to become effective December 1, 1920:

And the City of Lancaster by its City Attorney, George W. Vorys, having filed protest against such rates, alleging

that such increases are and will be unjust, unreasonable, unjustly discriminatory, unjustly preferential, and excessive, and petitioning the Commission to suspend the going into effect of the rates set forth in said schedule, and to fix and determine in lieu thereof a schedule of just and reasonable rates, charges, tolls and rentals for such service, and the Commission finding that the rights and interests of the public may be injuriously affected by such increase in said rates and charges, it is

Ordered, that this Commission enter upon a hearing concerning the propriety of the increased rates and charges set forth in said schedule, and that said hearing be begun at ten o'clock A. M. Central Standard Time, Thursday, February 10, 1921, at the hearing room of this commission, State Office Building, Columbus, Ohio. It is further [fol. 266] Ordered, that the operation and use of the rates and charges contained in said schedule be suspended and that the effective date thereof be, and hereby it is postponed for a period of 30 days from December 1, 1920, It is further

Ordered, that a copy of this order be filed with said schedule in this office, and that a copy be forthwith served upon the said The Central Union Telephone Company, which hereby is made a respondent in this proceeding and notified of the time and place of the hearing herein assigned.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; Beecher W. Waltermire, Byron M. Clen Dening, Commissioners. (Seal.)

Dated at Columbus, Ohio this 29th day of November, 1920.

[fol. 267] EXHIBIT 2 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 40

In the Matter of the Proposed Increased Rates of Central Union Telephone Company for Local Exchange Service at Lancaster, Ohio

Application of Central Union Telephone Company for Determination of Amount of Bond

Central Union Telephone Company, a corporation of Chicago, Cook County, Illinois, respectfully represents and shows to the Commission that:

1. On the 29th day of November, 1920, your Honorable Commission ordered that the operation and use of the rates and charges contained in your applicant's schedule, designated P. U. C. O. No. 5, be suspended and the effective date thereof be postponed for a period of 30 days from December 1st, 1920.

2. Your applicant elects to file with the Commission a bond, undertaking or other security, to the satisfaction of the Commission, securing and guaranteeing the repayment to all the consumers of such portion of such increased rate, joint rate, toll, classification, charge or rental, collected by your applicant, as the Commission, upon final hearing, may determine to have been unreasonable or excessive, which repayments shall be made at such times and in such [fol. 268] amounts as the Commission shall order, such bond, undertaking or other security to be in such amount as the Commission may from time to time determine.

3. No such increase or other charge has already accrued; and the estimated amount of such increase or other charge made by your applicant, extending over a period of one year, based upon the business of your applicant for the previous year, is shown on a statement attached hereto, marked "Exhibit A", and made a part hereof.

Wherefore, your applicant prays that your Honorable Commission determine the amount of such bond, undertaking or other security and that your Commission issue

such other and further orders as may be necessary in the premises.

Dated this 29th day of November, A. D. 1920.

Central Union Telephone Company, by E. A. Reed, General Manager.

STATE OF OHIO,
County of Franklin, ss:

E. A. Reed, being first duly sworn, deposes and says that he is the General Manager of the above named Central Union Telephone Company for the State of Ohio, duly authorized in the premises, and that the facts stated and allegations contained in the foregoing Application are true as he verily believes.

E. A. Reed.

Sworn to before me and subscribed in my presence by the said E. A. Reed, this 29th day of November, A. D. 1920. C. C. Fahl, Notary Public in and for said County. (Seal.)

[fol. 269] Exhibit "A" to Application

Lancaster, Ohio

Estimated Increase in Revenue Under P. U. C. O. No. 5

Monthly Rates

Class of Service	Present	Proposed	Increase	Stations 11-1-20	Increase Monthly	In Revenue annual
1-B	$4.50	$5.50	$1.00	211	$ 211.00	.....
2-B	4.00	4.75	.75	224	168.00	.....
1-R	2.50	2.75	.25	132	33.00	.....
2-R	2.00	2.25	.25	2,356	589.00	.....
PBX Trunks	6.50	8.25	1.75	13	22.75	.....
PBX Cord Boards	4.00	5.00	1.00	1	1.00	.....
PBX Add'l Position	2.50	3.00	.50	.....	.....	.....
PBX Cordless Boards	2.50	3.00	.50	5	2.50	.....
Interc. Trunks-R	2.50	4.00	1.50	.....	.....	.....
Joint User	1.75	2.75	1.00	.....	.....	.....
Extra Listing-B	.50	1.00	.50	14	7.00	.....
Extra Listing-R	.25	.50	.25	1	.25	.....
					$1,034.50	
						$12,414.00

[fol. 270] EXHIBIT 3 TO STIPULATION

Bond

Know All Men by These Presents:

That the undersigned, Central Union Telephone Company, a corporation organized and existing under the laws of the State of Illinois, hereinafter called the utility, is held and firmly bound unto the State of Ohio in the full and just sum of $12,000.00 lawful money of the United States, to the payment whereof, well and truly to be made, it does hereby, by these presents, bind itself, its successors and assigns;

The condition of this obligation is such that

Whereas, the utility has filed with the Public Utilities Commission of Ohio, hereinafter called the Commission, a schedule effecting an increase in rates, joint rates, tolls, classifications, charges or rentals, or stating new regulations or practices affecting an existing rate, joint rate, toll, classification, charge or rental for its Lancaster, Ohio, exchange, and the Commission has notified said corporation of its intention to enter upon a hearing concerning the propriety of such rates, joint rates, tolls, classifications, charges or rentals, and such new regulations or practices affecting existing rates, joint rates, tolls, classifications, charges or rentals; and;

Whereas, the Commission, having filed with such schedule and delivered to said utility a statement in writing of its [fol. 271] reasons for such suspension, has suspended the operation of such schedule and has postponed the use and operation of such rate, joint rate, toll, classification, charge, rental, regulation or practice; and

Whereas, the utility, pursuant to Section 614-20 of the General Code of Ohio, as amended by an act approved January 16, 1920, proposes to execute and file with the Commission an undertaking pursuant to and in accordance with the provisions of said section as so amended, in order that the suspension of payment of such increased rate, joint rate, toll, classification, charge or rental, shall not go into effect.

Now, Therefore, if the said utility shall well and truly repay to each and every consumer, at such times and in

such amounts as the Commission shall order, such portion of such increased rate, joint rate, toll, classification, charge or rental collected by said utility as the commission, upon final hearing, may determine to have been unreasonable or excessive, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof the utility has caused this bond to be executed and sealed by its proper officers, thereunto duly authorized, this 29th day of November, A. D. 1920.

Central Union Telephone Company, by Edgar S. Bloom, President. (Seal.)

Attest: C. L. Naughton, Sec'y.

[fol. 272] EXHIBIT 4 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 40

In the Matter of the Central Union Telephone Company's Proposed New Schedule Designated P. U. C. O. No. 5, Applying to Lancaster Exchange, Filed to Become Effective December 1, 1920

Entry Approving Undertaking

The Commission having heretofore determined the amount of the undertaking to be given by the said Central Union Telephone Company, on its election to charge the increased rates carried in its schedule during the period of suspension herein made to be the sum of Twelve Thousand Dollars ($12,000.00) and said Company having tendered for filing with and approval by this Commission its undertaking in the sum of Twelve Thousand Dollars ($12,000.00) over the signature of its President and the attestation of its Secretary together with a certified copy of the resolution of its Board of Directors authorizing such action by said officials and it appearing that the conditions of said undertaking are in conformity to law, said undertaking, therefore, is approved and permitted to be filed on the further condition that the Commission reserves to itself the right, always, to change the amount or modify the conditions of said

[fol. 273] undertaking, or to require said company to furnish other and additional surety, or sureties, thereon.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; Beecher W. Waltermire, Byron M. Clen Dening, Commissioners.

Dated at Columbus, Ohio, this 29th day of November, A. D., 1920.

[fol. 274] EXHIBIT 5 TO STIPULATION

BEFORE THE UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 42

In the Matter of the Proposed Increased Rates of the Central Union Telephone Company for Local Exchange Service, Ripley, Ohio

The Central Union Telephone Company having, on the 13th day of November, 1920, filed with this Commission, its schedule designated P. U. C. O. No. 8, providing certain increased rates and charges for local exchange service in the Village of Ripley, Ohio, to become effective December 16, 1920;

And the Village of Ripley, Ohio, by its attorney, E. R. Young, having this day filed its protest against such rates, alleging that such increases are and will be unjust, unreasonable and unnecessary, and petitioning the Commission to suspend the going into effect of the rates set forth in said schedule; and the Commission finding that the rights and interests of the public may be injuriously affected by such increase in said rates and charges, it is

Ordered, that this Commission enter upon a hearing concerning the propriety of the increased rates and charges set forth in said schedule, and that said hearing be begun [fol. 275] at ten o'clock A. M., Central Standard Time, Friday, January 7th, 1921, at the hearing room of this Commission, State Office Building, Columbus, Ohio. It is further

Ordered, that the operation and use of the rates and charges contained in said schedule be suspended and that the effective date thereof be, and hereby it is postponed for

a period of thirty days from December 16, 1920. It is further

Ordered, that a copy of this order be filed with said Schedule in this office, and that a copy be forthwith served upon the said Central Union Telephone Company, which hereby is made a respondent in this proceeding and notified of the time and place of the hearing herein assigned.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; Beecher W. Waltermire, Byron M. Clen Dening, Commissioners.

Dated at Columbus, Ohio, this 15th day of December, A. D. 1920.

[fol. 276] EXHIBIT 6 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 42

In the Matter of the Proposed Increased Rates of Central Union Telephone Company for Local Exchange Service at Ripley, Ohio

Application of Central Union Telephone Company for Determination of Amount of Bond

Central Union Telephone Company, a corporation of Chicago, Cook County, Illinois, respectfully represents and shows to the Commission that:

1. On the 15th day of December, 1920, your Honorable Commission ordered that the operation and use of the rates and charges contained in your applicant's schedule, designated P. U. C. O. No. 8, be suspended and the effective date thereof be postponed for a period of 30 days from December 16th, 1920.

2. Your applicant elects to file with the Commission a bond, undertaking or other security, to the satisfaction of the Commission, securing and guaranteeing the repayment to all the consumers of such portion of such increased rate, joint rate, toll, classification, charge or rental, collected by your applicant, as the Commission, upon final hearing, may

determine to have been unreasonable or excessive, which repayments shall be made at such times and in such amounts [fol. 277] as the Commission shall order, such bond, undertaking or other security to be in such amount as the Commission may from time to time determine.

3. No such increase or other charge has already accrued; and the estimated amount of such increase or other charge made by your applicant, extending over a period of one year, based upon the business of your applicant for the previous year, is shown on a statement attached hereto, marked "Exhibit A", and made a part hereof.

Wherefore, your applicant prays that your Honorable Commission determine the amount of such bond, undertaking or other security and that your Commission issue such other and further orders as may be necessary in the premises.

Dated this 15th day of December, A. D., 1920.

Central Union Telephone Company, by E. A. Reed, General Manager.

State of Ohio,
County of Franklin, ss:

E. A. Reed, being first duly sworn, deposes and says that he is the General Manager of above named Central Union Telephone Company for the State of Ohio, duly authorized in the premises, and that the facts stated and allegations [fol. 278] contained in the foregoing application are true as he verily believes.

E. A. Reed.

Sworn to before me and subscribed in my presence by the said E. A. Reed, this 15th day of December, A. D., 1920. C. C. Fahl, Notary Public in and for said County. (Seal.)

[fol. 279] Exhibit "A" to Application

Ripley, Ohio

Estimated Increased Revenue Under P. U. C. O. No. 8

Monthly Rates

Class of Service	Present	Proposed	Increase	Stations 12-1-20	Increase Monthly	In Revenue Annual
2-R	$1.75	$2.00	$ .25	167	$41.75	.....
Rural-R	1.75	2.00	.25	201	50.25	.....
Joint User	1.00	1.75	.75	...	.....	.....
PBX Trunks	4.25	5.25	1.00	...	.....	.....
Intercomm. Trunks-R	2.25	3.25	1.00	...	.....	.....
Extra Listing-B	.50	1.00	.50	...	.....	.....
Extra Listing-R	.25	.50	.25	...	.....	.....
PBX Cord Boards	4.00	5.00	1.00	...	.....	.....
PBX Add'l Positions	2.50	3.00	.50	...	.....	.....
PBX Cordless Boards	2.50	3.00	.50	...	.....	.....
					$92.00	
						$1,104.00

[fol. 280] Exhibit 7 to Stipulation

Bond

Know All Men by These Presents:

That the undersigned, Central Union Telephone Company, a corporation organized and existing under the laws of the State of Illinois, hereinafter called the utility, is held and firmly bound unto the State of Ohio in the full and just sum of $1,100.00 lawful money of the United States, to the payment whereof, well and truly to be made, it does hereby, by these presents, bind itself, its successors and assigns;

The condition of this obligation is such that

Whereas, the utility has filed with the Public Utilities Commission of Ohio, hereinafter called the Commission, a schedule effecting an increase in rates, joint rates, tolls, classifications, charges or rentals, or stating new regulations or practices affecting an existing rate, joint rate, toll, classification, charge or rental for its Ripley, Ohio, exchange, and the Commission has notified said corporation of its intention to enter upon a hearing concerning the propriety of such rates, joint rates, tolls, classifications, charges or rentals, and such new regulations or practices affecting existing rates, joint rates, tolls, classifications, charges or rentals; and

[fol. 281] Whereas, the Commission, having filed with such schedule and delivered to said utility a statement in writing of its reasons for such suspension, has suspended the operation of such schedule and has postponed the use and operation of such rate, joint rate, toll, classification, charge, rental, regulation or practice; and

Whereas, the utility, pursuant to Section 614-20 of the General Code of Ohio, as amended by an act approved January 16, 1920, proposes to execute and file with the Commission an undertaking pursuant to and in accordance with the provisions of said section as so amended, in order that the suspension of payment of such increased rate, joint rate, toll, classification, charge or rental, shall not go into effect.

Now, Therefore, if the said utility shall well and truly repay to each and every consumer, at such times and in such amounts as the Commission shall order, such portion of such increased rate, joint rate, toll, classification, charge or rental collected by said utility as the commission, upon final hearing, may determine to have been unreasonable or excessive, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof the utility has caused this bond to be executed and sealed by its proper officers, thereunto duly [fol. 282] authorized, this 16th day of December, A. D. 1920.

Central Union Telephone Company, by Edgar S. Bloom, President. (Seal.)

Attest: C. L. McNaughton, Secretary.

[fol. 283] EXHIBIT 8 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 42

In the Matter of the Proposed Increased Rates of the Central Union Telephone Company for Local Exchange Service, Ripley, Ohio

Entry Approving Undertaking

The Commission having heretofore determined the amount of the undertaking to be given by the said Central

Union Telephone Company, on its election to charge the increased rates carried in its schedule during the period of suspension herein made to be the sum of Eleven Hundred Dollars ($1,100.00) and said Company having tendered for filing with and approval by this Commission its undertaking in the sum of Eleven Hundred Dollars ($1,100.00) over the signatures of its President and the attestation of its Secretary together with a certified copy of the resolution of its Board of Directors authorizing such action by said officials and it appearing that the conditions of said undertaking are in conformity to law, said undertaking, therefore, is approved and permitted to be filed on the further condition that the Commission reserves to itself the right, [fol. 284] always, to change the amount or modify the conditions of said undertaking, or to require said Company to furnish other and additional surety, or sureties, thereon.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; Beecher W. Waltermire, Byron M. Clen Dening, Commissioners.

Dated at Columbus, Ohio, this sixteenth day of December, 1920.

[fol. 285] EXHIBIT 9 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 2367

In the matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the consent of the Public Utilities Commission of Ohio to and their approval of the consolidation of said two companies under the name of The Ohio Bell Telephone Company

This day after due notice to all parties in interest, this cause came on to be heard, at the time and place fixed therefor by the Commission upon the joint petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company, hereinafter called the constituent companies, for the consent of the Public Utilities Commission of Ohio to and the approval by the Commission of the consolidation and merger of said two companies into a consolidated com-

pany under the name of The Ohio Bell Telephone Company, and upon the evidence, and was argued by counsel and submitted to the Commission and it being made to appear to the Commission and the Commission being satisfied that said consolidation and merger will promote the public convenience and will furnish the public with adequate service for a reasonable rate, rental, toll or charge therefor, the Commission for the purpose of this consolidation and for the existing service and not for service after physical unification of the plants and lines hereby ascertains and determines the valuation of the property of said constituent companies upon which the rates, tolls, rentals and charges of the consolidated company are to be based, to be the sum of $81,316,427.90, and hereby fixes and determines the lawfully existing rates, charges, tolls and rentals of said constituent companies to be the rates, charges, tolls and rentals to be charged by said consolidated company after such consolidation and merger and until modified or changed in the manner provided by law.

[fol. 286] And the Commission having so ascertained and determined said valuation and having so fixed and determined said rates, tolls, charges and rentals so to be charged, it is therefore

Ordered, That the consent and approval of the Commission be and they hereby are given and granted for the consolidation and merger of said constituent telephone companies into one consolidated company, under the name of and to be known and designated as The Ohio Bell Telephone Company. It is further

Ordered, That in the communities where dual service is now furnished by said constituent companies, the said consolidated company shall proceed to unify its service immediately after the rates to be charged for such unified service shall have been fixed and determined in the manner provided by law. It is further

Ordered, That nothing herein shall be construed to be a consent to or approval by this Commission of any increase in rates or diminution of service within the territory now served by means of the respective properties of the constituent companies nor shall the findings herein as to the value of said properties of the constituent companies nor as to rates or service be binding upon this Commission or the consolidated company in any future proceeding involv-

ing matters of rates and service, or either of them. It is further

Ordered, That in all matters and causes pending before this Commission involving any of the property or the valuation of any of the property, or the rates, charges, tolls or rentals, of said constituent companies, respectively, the name of the consolidated company be and it hereby is substituted for the name of the respective constituent company party thereto, and that said consolidated company shall have and succeed to all the rights and shall assume and be subject to all the liabilities, respectively, of the said constituent companies in said matters and causes, and each of them. It is further

Ordered, That all outstanding contracts and all long distance connections of both of the constituent companies shall be preserved and protected by the consolidated company.

[fol. 287] And the Commission coming now to consider the Petition and Motion of the City of Columbus, Ohio, filed herein September eighth, 1921, does overrule same. It is

Ordered, however, that nothing in this order shall be construed to impair, affect, or disturb the rights of the City of Columbus, Ohio, under and by virtue of the Franchise to the Columbus Citizens Telephone Company, dated May eighth, 1899.

The Public Utilities Commission of Ohio, George T. Poor, Chairman; Charles C. Marshall, Elisha A. Tinker, Commissioners.

Dated at Columbus, Ohio, this 17th day of September, 1921.

[fol. 288] EXHIBIT 10 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 124

In the Matter of the Proposed Increased Rates and Charges of the Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio, Filed on December 21, 1923, to Become Effective January 21, 1924

It Appearing, That there has been filed with The Public Utilities Commission of Ohio by The Ohio Bell Tele-

phone Company, tariff containing schedules stating new rates and charges and new regulations and practices affecting such rates and charges for telephone toll service between points in the State of Ohio, to become effective on January 21, 1924, designated as follows:

The Ohio Bell Telephone Company

P. U. C. O. Toll No. 4 (Sections 1 to 8, Inclusive)

It Further Appearing, That said schedules make certain increases in rates for telephone toll service between points in the State of Ohio and the Chamber of Commerce of Niles, Ohio, and various others having filed protests against said proposed increased rates, and the Commission not being satisfied that such proposed increased rates are just, lawful and reasonable, it is

Ordered, that the Commission enter upon a hearing concerning the propriety and lawfulness of the rates, charges, [fol. 289] regulations and practices, stated in the schedules contained in said tariff:

It is Further Ordered, That the operation of the schedules contained in said tariff be suspended for a period of 120 days from December 21, 1923, unless otherwise ordered by the Commission:

It is Further Ordered, That a copy of this order be filed with said schedules in the office of The Public Utilities Commission of Ohio and a copy hereof be forthwith served upon The Ohio Bell Telephone Company, which company is hereby made respondent to this proceeding:

And it is Further Ordered, That this proceeding be, and the same is hereby, assigned for hearing on Thursday, February 7, 1924, at ten o'clock A. M., Central Standard Time, at the Hearing Room of the Commission in the State Office Building, Columbus, Ohio.

The Public Utilities Commission of Ohio, Chas. C. Marshall, Chairman; Geo. T. Poor, F. B. Maullar, Commissioners.

Dated at Columbus, Ohio, this 18th day of January, 1924.

A true copy. J. B. Dugan, Acting Secretary.

[fol. 290] EXHIBIT 11 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 124

In the Matter of the Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio, Filed on December 21, 1923, to Become Effective January 21, 1924

Application of the Ohio Bell Telephone Company for Determination of Amount of Bond

The Ohio Bell Telephone Company, a corporation of Cleveland, Cuyahoga County, Ohio, respectfully represents and shows to the Commission that:

1. On the 18th day of January, 1924, your Honorable Commission ordered that the operation of the schedules contained in your applicant's tariff, designated P. U. C. O. Toll No. 4 (Sections 1 to 8, inclusive), be suspended for a period of 120 days from December 21, 1923, unless otherwise ordered by the Commission; and beginning on Thursday, February 7, 1924, your Honorable Commission entered upon a hearing concerning the propriety and lawfulness of the rates, charges, regulations and practices stated in the schedules contained in said tariff.

2. It appearing that such hearing cannot be concluded within the period of suspension, as above stated, your applicant desires that the rates, joint rates, tolls, classifications, charges, rentals, regulations and practices stated in [fol. 291] the schedules contained in said tariff shall go into effect at the end of the said period of suspension and elects to file with the Commission a bond, undertaking or other security, to the satisfaction of the Commission, securing and guaranteeing the repayment, with interest at the rate of six (6) per centum per annum from the date of payment by the consumer to the date of repayment by your applicant, to all the consumers of such portion of such increased rate, joint rate, toll, classification, charge or rental, collected by your applicant as the Commission, upon final hearing, may determine to have been unreasonable or excessive, which repayments shall be made at such

times, in such amounts and in such manner as the Commission shall order, and guaranteeing compliance otherwise with the provisions of law relating thereto; such bond, undertaking or other security to be in such amount as the Commission may from time to time determine.

3. No such increase or other charge has already accrued; and the estimated amount of such increase or other charge made by your applicant, extending over a period of one year, based upon the business of your applicant for the previous year, is the sum of Four Hundred Twenty-One Thousand Dollars ($421,000.00).

Wherefore, your applicant prays that your Honorable Commission determine the amount of such bond, undertaking or other security and that your Commission issue [fol. 292] such other and further orders as may be necessary and proper in the premises.

Dated this 14th day of April, A. D., 1924.

The Ohio Bell Telephone Company, by C. P. Cooper, President.

State of Ohio,
County of Cuyahoga, ss:

C. P. Cooper, being first duly sworn, deposes and says that he is the President of above named The Ohio Bell Telephone Company, duly authorized in the premises, and that the facts stated and allegations contained in the foregoing application are true as he verily believes.

C. P. Cooper.

Sworn to before me and subscribed in my presence by the said C. P. Cooper, this 14th day of April, A. D., 1924. F. W. Huber, Notary Public in and for said County. (Seal.)

[fol. 293] EXHIBIT 12 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 124

In the Matter of the Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio, Filed on December 21, 1923, to Become Effective January 21, 1924

Bond

Know All Men by These Presents:

That the undersigned, The Ohio Bell Telephone Company, a corporation organized and existing under the laws of the State of Ohio, hereinafter called the utility, as principal and American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto the State of Ohio in the full and just sum of Two Hundred Fifteen Thousand Dollars ($215,000.00) lawful money of the United States, to the payment whereof, well and truly to be made, they do hereby, by these presents, bind themselves, their successors and assigns.

The condition of this obligation is such that—

Whereas, the utility has filed with the Public Utilities Commission of Ohio, hereinafter called the Commission, a schedule effecting an increase in rates, joint rates, tolls, classifications, charges or rentals, or stating new regulations or practices affecting an existing rate, joint rate, toll, [fol. 294] classification, charge or rental for its telephone toll service; and

Whereas, the Commission having filed with such schedule and delivered to said utility a statement in writing of its reasons for such suspension, has suspended the operation of such schedule and has postponed the use and operation of such rates, joint rates, tolls classifications, charges, rentals, regulations or practices for a period of one hundred and twenty (120) days from December 21, 1923; and

Whereas, the Commission has heretofore entered upon a hearing concerning the propriety of such rates, joint rates, tolls, classifications, charges or rentals, and such new regulations or practices affecting existing rates, joint rates,

tolls, classifications, charges or rentals; which hearing cannot be concluded within the suspension period, as above stated; and

Whereas, the utility, pursuant to Section 614-20 of the General Code of Ohio as amended by an act approved April 19, 1923, proposes to execute and file with the Commission an undertaking pursuant to and in accordance with the provisions of said section as so amended, in order that such increased rates, joint rates, tolls, classifications, charges or rentals, regulations, and practices, shall go into effect at the end of the said period of one hundred and twenty (120) days.

Now, Therefore, if the Said Utility Shall Well and Truly Repay to each and every corporation and person entitled thereto, at such times, in such amounts and in such manner as the Commission shall order, such portion of such increased rates, joint rates, tolls, classifications, charges or rentals collected by said utility as the Commission, upon final hearing, may determine to have been unreasonable or excessive, with interest at the rate of six (6) per centum per annum, from the date of payment by the consumer to the date of repayment by the utility, and shall otherwise [fol. 295] comply with the provisions of law relating thereto, then this obligation shall be void, otherwise to remain in full force and effect.

In Witness Whereof, the utility, said The Ohio Bell Telephone Company, as principal, and the said American Surety Company, as surety, have caused this bond to be executed and sealed in their names by their proper officers, respectively, thereunto duly authorized, this 15th day of April, A. D., 1924.

The Ohio Bell Telephone Company, by C. P. Cooper, President. (Seal.)

Attest: C. L. McNaughton, Sec'y.

American Surety Company of New York, by J. S. Mossgrove, Resident Vice-President. (Seal.)

Attest: Geo. F. Ainslie, Res. Assistant Sec'y.

[fol. 296] EXHIBIT 13 TO STIPULATION

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 124

In the Matter of the Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio, Filed on December 21, 1923, to Become Effective January 21, 1924

Entry

This day this matter came on for hearing, and was heard upon the application of respondent, The Ohio Bell Telephone Company, for a determination, by the Commission, of the amount of a bond to be given by said respondent to permit it, as provided by law, upon the expiration of the term of suspension to put into effect the rates, joint rates, tolls, classifications, charges, rentals, regulations and practices stated in the schedules, contained in its tariff, designated P. U. C. O. Toll No. 4, (Sections 1 to 8, inclusive), filed with this Commission by the said respondent upon December 21, 1923, to become effective January 21, 1924, the use and operation of which was suspended for the period of 120 days from the said date of filing of said schedule by the order heretofore made and entered herein.

Upon consideration whereof, and being fully advised in the premises, and it having been represented and shown to the Commission by said respondent that the estimated amount of the increase in said rates, joint rates, tolls, etc., for the period of one year will be in the neighborhood of $421,000.00, and the statute in such case made and provided prescribing that the amount of said bond to be fixed by the Commission shall not exceed the estimated amount of such increase, for the period of one year or be less than one-half of such amount, and said statute further providing [fol. 297] that the Commission may, from time to time, determine the amount of such bond to be on file with the Commission, and the said respondent having elected to furnish surety upon its bond so to be given, the Commission, having in mind the cost to the respondent for providing such surety, hereby finds and does direct said The Ohio

Bell Telephone Company, that it may, at the expiration of said period of suspension aforesaid, impose and collect the said rates, joint rates, tolls, etc., set forth in said schedule, designated P. U. O. Toll No. 4 (Sections 1 to 8, inclusive), the use and operation of which were so suspended as aforesaid, to file with this Commission its bond, or undertaking, with proper and adequate surety, at this time in the sum of Two Hundred and Fifteen Thousand Dollars ($215,000.00).

And said The Ohio Bell Telephone Company having thereupon tendered for filing with and approval by this Commission its bond, or undertaking in the sum of Two Hundred and Fifteen Thousand Dollars ($215,000.00), with the American Surety Company of New York, as surety, and over the signature of its President and the attestation of its Secretary, together with a certified copy of the resolution of its Board of Directors authorizing such action by said officials, and it appearing that the conditions of said bond, or undertaking, are in conformity to law, said undertaking, or bond, therefore is approved and permitted to be filed on the further condition that the Commission reserves to itself the right, always, to change the amount or modify the conditions of said undertaking, or bond, or to require said respondent company to furnish other and additional surety, or sureties, thereon.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; George T. Poor, Commissioners.

Dated at Columbus, Ohio, this fifteenth day of April, 1924.

[fol. 297½] [File endorsement omitted.]

[fol. 298] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION No. 4—Filed October 28, 1936

The parties in the above entitled cause agree that the following evidence which is not material to a determination of this appeal shall be omitted from the record to be printed in this cause:

1. The entire testimony of Frank R. McBerty.

2. The following deposition exhibits consisting of newspaper and magazine articles written by various officers and employees of the American Telephone and Telegraph Company:

1	21	39
9	22	110
10	28	111
11	31	114
12	32	188
18	34	202
20	38	204

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Appellant.
Donald C. Power, Attorney for Appellee.

Dated October 28, 1936.

[fol. 298½] [File endorsement omitted.]

[fol. 299] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

SUPERSEDEAS BOND ON APPEAL

Know All Men By These Presents:

That The Ohio Bell Telephone Company, the appellant above named, as principal, and American Telephone and Telegraph Company, as surety, are held and firmly bound unto the State of Ohio for the benefit of the telephone subscribers and users of the appellant who may be affected by the judgment in the above entitled cause, in the full and just sum of Twenty Million Dollars ($20,000,000), to be paid to the said subscribers and users entitled thereto, to which payment, well and truly to be made, we so bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of October, 1936.

Whereas, lately, at the January 1936 term of the Supreme Court of Ohio, in a suit pending in said court between The Ohio Bell Telephone Company, as plaintiff in error, and The Public Utilities Commission of Ohio, as defendant in error, being Consolidated Cause No. 25065 on the docket of said court, judgment was rendered on the 22nd day of July, 1936, against said The Ohio Bell Telephone Company and in favor of The Public Utilities Commission of Ohio [fol. 300] affirming the final order of said Commission in proceedings No. 3307 on its docket, reviewed by the Supreme Court of Ohio in said cause, and said The Ohio Bell Telephone Company has petitioned for and has been allowed by the Honorable Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio, an appeal to the Supreme Court of the United States in said cause and a citation has been issued, directed to the appellee, said The Public Utilities Commission of Ohio, citing and admonishing it to appear in the Supreme Court of the United States at Washington, D. C. within forty days from and after the date of the signing of said citation; and

Whereas, it is the purpose of this obligation to furnish indemnity for the whole amount of said judgment, including just damages for delay, and costs and interest on appeal and to furnish requisite security therefor;

Now, the condition of this obligation is such that if said appellant, The Ohio Bell Telephone Company, shall well and truly prosecute its said appeal to effect and answer all damages and costs if it fail to make its plea good and repay all moneys, with interest, paid by any person, firm or corporation for service in excess of the charges fixed by said order of said Commission in the event the Supreme Court of the United States should affirm said final judgment of the Supreme Court of Ohio, then the above obligation is to be void; else to remain in full force and effect.

In Witness Whereof, said The Ohio Bell Telephone Company has caused its corporate name to be signed hereto by Archibald J. Allen, one of its Vice Presidents and its corporate seal hereto affixed, attested by Charles S. Maltby, its Secretary, and American Telephone and Telegraph Company has caused its corporate name to be signed hereto by [fol. 301] Charles P. Cooper, one of its Vice Presidents, and its corporate seal to be hereto affixed, attested by Robert

H. Strahan, its Secretary, this 7th day of October, A.D. 1936,

The Ohio Bell Telephone Company by (Signed) Archibald J. Allen, Vice-President.

Attest: (Signed) Charles S. Maltby, Secretary. (Seal.)

American Telephone and Telegraph Company, by (Signed) Charles P. Cooper, Vice-President.

(Jurats omitted.)

(Resolutions omitted.)

[fols. 302-306] Approved Oct. 14, 1936. Carl V. Weygandt, C. J.

[fol. 307] In Supreme Court of the United States

[Title omitted]

Cost Bond

Know All Men By These Presents:

That The Ohio Bell Telephone Company, the appellant above named, as principal, and American Surety Company of New York, as surety, are firmly bound unto the State of Ohio and the Public Utilities Commission of Ohio, the appellee, in the full and just sum of One Thousand Dollars ($1,000.00) to be paid to said appellee and its successors, to which payment well and truly to be made we bind ourselves, our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 14th day of October, 1936.

Whereas, lately in the Supreme Court of the State of Ohio, in a suit pending in said Court between The Ohio Bell Telephone Company, as plaintiff in error (appellant), and the Public Utilities Commission of Ohio, as defendant in error (appellee), judgment was rendered against appellant in the Supreme Court of the State of Ohio on the 22nd day of July, 1936, which said judgment became final upon the overruling of appellant's application for rehearing on Oc-
[fol. 308] tober 7, 1936, and said appellant has petitioned for and has been allowed by the Honorable Carl V. Wey-

gandt, Chief Justice of the Supreme Court of the State of Ohio, an appeal to the Supreme Court of the United States and a citation has been issued directed to the said appellee, citing and admonishing it to appear in the Supreme Court of the United States at Washington, D. C. within forty (40) days from and after the date of said citation; now the condition of this obligation is such:

That if the said appellant shall prosecute said appeal to effect and answer all costs if it fail to make its plea good then the above obligation to be void; else to remain in full force and effect.

In Witness Whereof said The Ohio Bell Telephone Company has caused its corporate name to be signed hereto by F. M. Stephens one of its Vice Presidents, and its corporate seal hereto affixed, attested by Charles S. Maltby its Secretary, and the American Surety Company of New York has caused its corporate name to be signed hereto by C. W. McNeil one of its Res. Vice Pres. and its corporate seal to be hereto affixed, attested by Jesse Nimocks its Res. Asst. Sect'y this 14th day of October, A.D. 1936.

The Ohio Bell Telephone Company, by (Signed) F. M. Stephens, Vice President.

Attest: (Signed) Charles S. Maltby, Secretary.

American Surety Company of New York, by C. W. McNeil, Res. Vice Pres.

Attest: (Signed) Jesse Nimocks, Res. Asst. Secy.

Approved Oct. 14, 1936. Carl V. Weygandt, C. J.

[fols. 309-315] (Resolution omitted.)

(Statement of resources omitted.)

[fols. 316-318] [File endorsement omitted.]

[fol. 319] IN SUPREME COURT OF OHIO

No. 25065

Error to the Public Utilities Commission of Ohio

[Title omitted]

Petition in Error of the Ohio Bell Telephone Company to Review Findings and Order of the Public Utilities Commission of Ohio of September 6, 1934, in Cause No. 3307 and Application for Stay and Suspension of Such Order—Filed October 27, 1934

PETITION IN ERROR

A

The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of September, 1921, a corporation duly organized under the laws of Ohio.

Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers stations, and of toll lines, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in said state telephonic messages, and has been [fol. 320] and now is a public utility within the meaning of the General Code of Ohio.

The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the "Commission," is now and has been continuously since 1913 an administrative body created by the laws of the State of Ohio.

B

This proceeding in error is brought to obtain a reversal, upon the grounds hereinafter stated, of the findings and order of the Commission made and entered on September 6, 1934, as well as the findings and orders of the Commission of January 16, March 1, July 5 and 9, 1934, (heretofore complained of in Causes Nos. 24694, 24695 and 25023 upon the

dockets of this Court) in so far as said findings and orders form the basis for or are incorporated into said findings and order of September 6, 1934.

The order of September 6, 1934, is the latest of a series of orders entered by the Commission in Cause No. 3307, which cause, inaugurated October 14, 1924 upon the Commission's own motion, is an investigation and inquiry to determine the fair value of the property of The Ohio Bell Telephone Company and to fix just and reasonable rates, rules and regulations for its service.

The order of September 6, 1934, requires plaintiff in error to refund what the Commission found to be excess charges for its exchange services rendered during the years 1925 to 1932 inclusive, in the sum of $11,423,137, and for its toll service for the years 1925 and 1926, the sum of $409,127, or a total of $11,832,264. The order fixes the amounts to be repaid to the subscribers in each of 44 exchange areas listed in Schedule A of said order and in the toll system and requires such repayment to be made within 90 days.

[fol. 321] C

A brief history of the proceedings before and the findings and orders entered by the Commission, in so far as essential to the questions presented by this petition in error, is as follows:

1. Prior to October 14, 1924 plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence laws, respectively (108 Ohio Laws 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest had been made the subject of a separate case on the docket of the Commission. In each such separate case the Commission had suspended the effective date of the schedule and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter said rates had become effective pursuant to a separate bond filed with and approved by the Commission in each such case, conditioned for the repayment by plaintiff in error of the portion of

such increased rates finally determined by the Commission to be excessive. In each such case plaintiff in error was proceeding to show separately the fair value of its property and its net income and that the rates so made effective under bond were not excessive.

2. On October 14, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's entire property and the reasonableness of its rates, and consolidated with said company-wide investigation (No. 3307) all of the then pending separate cases.

3. Thereafter plaintiff in error filed separate schedules of increased rates for certain classes of its service in other [fol. 322] exchanges, some of which schedules were in like manner suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. There are pending and undisposed of forty-five of such separate exchange cases and one such toll case, in which cases plaintiff in error has on file with the Commission bonds aggregating more than $14,000,000.

4. Instead of determining said exchange and toll cases separately, the Commission in its said several orders herein referred to, has ordered plaintiff in error to make refunds based upon the Commission's findings of value of plaintiff in error's intrastate property as a single unit and of its aggregate net income therefrom, without having found or determined the fair value of plaintiff in error's property or the amount of its net income in respect of any separate exchange or its toll system, and without having found for any year or years that any portion of any rate was excessive.

5. The Commission's first order, entered on January 10, 1931, tentatively fixed the fair value of plaintiff in error's total property, including the interstate portion thereof, as of June 30, 1925, at $104,282,735. (Exhibits "A" and "B" to this petition in error, Appendix, pages 1 and 29.)

6. On January 16, 1934, the Commission made its findings of final value for plaintiff in error's intrastate property as of June 30, 1925, by deducting from its tentative finding the sum of $2,714,788 on account of the interstate property, and

by further reducing such tentative finding in the following amounts, without any change in the pertinent evidence:

(a) By deducting the sum of $316,090 from the allowance for right of way;

(b) By eliminating the sum of $3,490,905 on account of going concern value;

(c) By reducing the allowance for working capital, including materials and supplies, by the sum of $535,970; and [fol. 323] (d) By deducting the sum of $3,296,181 from the amount of undistributed construction expenditures.

The Commission's finding of final value of the intrastate portion of plaintiff in error's property as of June 30, 1925, was thus $93,707,488 or $7,639,146 lower than its finding of tentative value.*

The Commission also found the value of plaintiff in error's property for each succeeding year to 1933 by the application of price trends hereafter referred to.

In the same order the Commission found that plaintiff in error had collected excess charges for its intrastate telephone service for the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172 and ordered plaintiff in error to refund to its subscribers said entire sum, with interest, and to file with the Commission a schedule of reduced rates for its telephone service effective retroactively as of June 30, 1925, and thereafter until changed by the order of the Commission.** (Exhibits "D" and "E" to this petition in error, Appendix, pages 39 and 153.)

7. The Commission has consistently found that for the year 1933 plaintiff in error had earned no excess income, and therefore no refund has been ordered for that year.

8. Pursuant to said orders of January 16 and March 1, 1934, plaintiff in error, on April 17, 1934, submitted to the

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* The amount of the several items deducted for the entire property, interstate and intrastate, was $7,860,459. The deductions shown above are for the intrastate property only.

** The order of January 16, 1934, was modified by a nunc pro tunc order entered March 1, 1934. (Exhibit "H," Appendix, page 187.) The above is the substance of the order as modified.

Commission, under a written protest, certain "Rate and Revenue Data and Estimates" hereafter referred to.

9. On July 5, 1934, the Commission made another order (Exhibit "J" to this petition in error, Appendix, page 223), wherein it found that plaintiff in error had collected under [fol. 324] bond in protesting exchanges and for its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $744,541 for such toll services, or a total of $12,167,678, being $1,121,494 less than the amount ordered refunded in its former orders.

Said order required plaintiff in error to show cause upon August 1, 1934, why said refunds should not be ordered.

10. On July 9, 1934, the Commission ordered plaintiff in error (Exhibit "K" to this petition in error, Appendix, page 229), to show cause by August 1, 1934, why a further order should not enter adopting and substituting for plaintiff in error's existing schedules of rates, "said first or said second revision of existing schedules" of plaintiff in error (referring to the hypothetical rate calculations contained in the "Rate and Revenue Data and Estimates" furnished by plaintiff in error under protest as aforesaid).

11. On September 6, 1934, the Commission entered the order herein complained of, wherein it found that plaintiff in error had collected under bond in protesting exchanges and from its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $409,127 from such toll services, or a total of $11,832,264, being $1,456,908 less than the amount ordered refunded in said orders of January 16 and March 1, 1934, and $335,414 less than the amount ordered refunded in the order of July 5, 1934; and ordered plaintiff in error to make repayment to its subscribers; all as set forth in said order and in Schedule A thereof. In its finding of September 6, 1934, the Commission stated that all prior findings and orders, pertaining to excess charges, conflicting with said finding of September 6, 1934, should be modified to conform to it.

[fol. 325] D

Plaintiff in error, within the time required by law, appropriately challenged each of the findings, orders and rulings

of the Commission and made certain written requests upon it, as follows:

1. On February 7, 1931, protest to finding of tentative value of January 10, 1931, was filed by plaintiff in error. (Exhibit "C" to this petition in error, Appendix, page 33.) It was overruled by the Commission in its order of January 16, 1934. (Exhibit "E" to this petition in error, Appendix, page 153.)

2. On February 6, 1934, plaintiff in error filed its application and petition for a rehearing with respect to the order of January 16, 1934. (Exhibit "F" to this petition in error, Appendix, page 163.) It was overruled by the Commission in its order of March 1, 1934. (Exhibit "H" to this petition in error, Appendix, page 187.)

3. On February 17, 1934, plaintiff in error filed with the Commission its application and request (Exhibit "G" to this petition in error, Appendix, page 185):

(a) That the Commission modify said findings and order of January 16, 1934, by finding that the rates charged by plaintiff in error are just and lawful rates and by establishing such rates as the rates thereafter to be charged by plaintiff in error for its services until changed or modified in accordance with law; (b) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed, to introduce evidence of the fair value of its property and its net income in each of the said separate causes, and (c) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error has never had access.

[fol. 326] This request was overruled by the Commission in its order of March 1, 1934.

4. On March 9, 1934, plaintiff in error filed its protest, application and petition for a rehearing with respect to the order of March 1, 1934, (Exhibit "I" to this petition in error, Appendix, page 193) and on the same day the Commission overruled the same.

5. On April 17, 1934, pursuant to said orders of January 16 and March 1, 1934, plaintiff in error duly submitted to the Commission under written protest certain "Rate and Revenue Data and Estimates" heretofore referred to.

6. On July 31, 1934, plaintiff in error filed:

An application and request, directed to the order of July 5, 1934, (a) for permission to inspect and rebut the undisclosed price trend information hereinabove in paragraph 3(c) referred to; (b) for a disclosure of the Commission's methods of apportionment and allocation employed in arriving at the refunds found therein; and (c) for the opportunity to introduce separate evidence in the separate bond cases as hereinbefore set forth (Exhibit "L" to this petition in error, Appendix, page 231);

An application and request directed to the order of July 9, 1934, that the Commission fix plaintiff in error's present rates as the rates for its future service or, if the Commission intended to reduce its present rates, to permit plaintiff in error to show that the reduced rates proposed by the Commission would reduce the plaintiff in error's net income for the year 1934 by $1,800,000 and permit to earn less than 3½% upon the fair value of its intrastate property for 1934 (Exhibit "M" to this petition in error, Appendix, page 237);

Verified return to the rule to show cause contained in the order of July 5, 1934, (Exhibit "N" to this petition in error, Appendix, page 241);

Verified return to the rule to show cause contained in the order of July 9, 1934, (Exhibit "O" to this petition in error, Appendix, page 253);

[fol. 327] Protest of plaintiff in error against orders of July 5 and 9, 1934, and application and petition for rehearing with respect to said orders (Exhibit "P" to this petition in error, Appendix, page 265).

7. On August 1, 1934, the Commission overruled plaintiff in error's said application to establish its present rates as its rates for the future and on September 6, 1934 overruled all of the other applications, protests, petitions and returns referred to in paragraph 6.

8. On August 29, 1934, plaintiff in error filed its protest against the Commission's ruling of August 1, 1934 and its

further application and petition for a rehearing. (Exhibit "Q" to this petition in error, Appendix, page 307.)

9. On September 25, 1934, plaintiff in error filed with the Commission its application and request (Exhibit "S" to this petition in error, Appendix, page 321) with respect to the Commission's order of September 6, 1934 (Exhibit "R" to this petition in error, Appendix, page 311):

a. To permit plaintiff in error, in accordance with the requests theretofore made by it, to introduce separate evidence in respect of each of the separate bond cases;

b. To permit plaintiff in error to examine and rebut the price trend information hereinabove in paragraphs (3) and (6) referred to; and

c. To make a disclosure with respect to the instructions of the Commission to its accountant, Wood, and his use of such instructions in making the apportionment of excess earnings.

This application was denied by the Commission on September 27, 1934.

10. On October 1, 1934, plaintiff in error filed with the Commission its protest against said order of September 6, 1934, and its application and petition for a rehearing of this [fol. 328] cause (Exhibit "T" to this petition in error, Appendix, page 327), which was denied on October 19, 1934.

11. On October 1, 1934, plaintiff in error also filed with the Commission its application for a stay of the order of September 6, 1934 (Exhibit "U" to this petition in error, Appendix, page 383), which application the Commission denied on October 19, 1934.

Each and all of the exhibits, "A" to "U," above referred to are hereby incorporated herein and made a part hereof.

E

In said proceedings, acts, findings and orders, the Commission erred, as follows:

1. In basing its said findings of value and orders upon alleged material and labor cost prices and trends obtained from various sources without plaintiff in error's knowledge, and not offered or introduced in evidence in any open hearing or made a part of the record in this case and to which

plaintiff in error never had access and as to which it had no opportunity to cross-examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the fair value of plaintiff in error's property as of June 30, 1925, thereupon erroneously used the price trends obtained from the sources [fol. 329] above referred to in fixing the fair value of plaintiff in error's intrastate property, for each of the years 1926 to 1933, both inclusive.

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and plaintiff in error had no opportunity to examine or cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing.

On February 17, July 31 and September 25, 1934, plaintiff in error filed the written requests heretofore referred to, each of which in specific terms asked the Commission to disclose the evidence on which it had arrived at the price trends above referred to and had fixed the value of plaintiff in error's intrastate property. These requests were all denied. The Commission mistakenly stated in its order of September 6, 1934, that plaintiff in error had been accorded ample opportunity to examine and consider all necessary and pertinent evidence. The record, however, is undisputed that plaintiff was never granted access to or an opportunity to

examine any of the price trend information above referred to upon which the value of plaintiff in error's property for the years 1926 to 1933 was fixed.

The findings of value and the orders of the Commission fixing the amount of the refunds, aggregating $11,832,264, which were necessarily based upon such claimed proof deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the [fol. 330] Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. Plaintiff in error was deprived of its property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by the order of the Commission of September 6, 1934, ordering plaintiff in error to refund to its exchange and toll subscribers the amounts set forth therein, because:

The Commission refused to receive evidence showing separately for each year the fair value of plaintiff in error's property and net income and fair rate of return with respect to each separate exchange and plaintiff in error's toll system where rates had become effective pursuant to bonds as provided in the Robinson and Pence laws notwithstanding repeated written requests of plaintiff in error to introduce such evidence and repeated requests that a date be fixed for hearing the same.

Said refunds therefore were ordered erroneously, arbitrarily and without any evidence upon which they can be sustained.

3. Plaintiff in error's rates throughout the period in controversy in said cause were of two kinds:

Those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence laws;

Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

In fixing the amount of the refunds attributable to the bond cases, the Commission made certain apportionments and an allocation as follows:

1st. An apportionment of the alleged excessive earnings of plaintiff in error for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between protesting exchanges, that [fol. 331] is to say, exchanges wherein any rate had been collected under bond in any of the aforementioned years, and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected;

2nd. An allocation of $409,127 to plaintiff in error's toll system and of $11,423,137 to its protesting exchanges; and

3rd. An apportionment of the sum of $11,423,137, the amount required to be refunded in its protesting exchanges, among said several exchanges.

The Commission erred in making said apportionments and allocation, and in ordering plaintiff in error to make refunds as ordered, in the following respects:

(a) It had no authority to require plaintiff in error to make refunds with respect to rates collected under bond without determining the fair value of plaintiff in error's property and its net income for each of its protesting exchanges separately and for its toll system. This the Commission refused to do. Instead, it arbitrarily used and applied accounting methods having no relation to property values and net earnings.

(b) The Commission's method employed in making said apportionments and allocation was erroneous, arbitrary, inapplicable and not based upon any evidence in the case.

(c) In arriving at the portion of excess earnings to be refunded both in exchanges and in the toll system, the Commission considered exchange service revenues only and ignored toll revenues. Its error in this respect was twofold: first, plaintiff in error during the period involved received large revenues from its intrastate toll system and these revenues were disregarded in making the apportionment; second, the use of revenues as a basis is wholly improper because revenues are in no sense evidence of net earnings.

(d) In making the apportionment between the protesting and the non-protesting exchanges the Commission included as bonded revenues in each year the total revenues in any exchange in which any rate had been collected pursuant to bond, although substantial portions of such revenues were [fol. 332] not collected under bond, thereby erroneously increasing by more than $4,000,000 the refunds required to be made by plaintiff in error.

(e) Plaintiff in error was required to make refunds in excess of $400,000 in respect of its intrastate toll system for the years 1925 and 1926 although the Commission made no determination of the fair value of the intrastate toll property or its net income or that any toll rate was excessive.

(f) The Commission did not find that any of plaintiff in error's exchange or toll rates collected under bond was unreasonable or excessive for any year. Without such finding the Commission could not under the applicable Ohio statutes lawfully order any refund.

(g) The Commission used an arbitrary method in ordering said refunds, viz: for each of the years in controversy a refund for each exchange, based in each instance upon the same percentage of the amount of the increases in rates collected under bond, which basis was wholly without support in the evidence.

(h) In making its apportionment of excessive earnings between protesting and non-protesting exchanges the Commission used the basis of total exchange service revenues. This method was necessarily based upon the assumption that there was included in each dollar of such total exchange service revenues an equal amount of excess net earnings. In its subsequent apportionment and allocation, the Commission abandoned this method and the necessary assumption upon which it was based and ordered refunds to the extent of $4,640,364 more than would have resulted from a consistent application of the first method.

The action of the Commission with respect to such refunds and the apportionments and allocations upon which they were based deprived plaintiff in error of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 333] 4. The findings and orders of the Commission deprive plaintiff in error of its property without due

process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

(a) That the fair value of plaintiff in error's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) That the net income of plaintiff in error from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) That the reasonable rates of return which plaintiff in error was entitled to earn upon said intrastate property were the following percentages for the following years:

1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ " " " "
1932 and 1933	5½ " " " "

[fol. 334] (d) In its finding and order of September 6, 1934, the Commission found that plaintiff in error had col-

lected excess charges under bond in protesting exchanges and in its intrastate toll system in the following amounts:

	Exchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
	$11,423,137.00	$409,127.00

Upon such findings so made, the Commission on said date ordered plaintiff in error to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $409,127, or an aggregate amount of $11,832,264, together with interest thereon at the rate of six per cent (6%) per annum from the date of payment until the date of refund.

The findings and orders of the Commission are erroneous, arbitrary, unreasonable, invalid and confiscatory of plaintiff in error's property in that the fair value of plaintiff in error's said intrastate property in each of the years 1925 to 1933 inclusive was largely in excess of the amounts so found by the Commission therefor; plaintiff in error's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by plaintiff in error were substantially lower than those which the Commission found plaintiff in error had earned in each of said years, and the return to which plaintiff in error was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and plaintiff in error had no excessive [fol. 335] or unreasonable net income in any of said years, all as more particularly shown in Specifications of Error Nos. 5, 6, 7 and 8, infra.

5. The Commission should have found that the minimum fair value of plaintiff in error's intrastate property was at least $30,000,000 in excess of the values found by the Commission, set forth in (a) of Specification of Error No. 4, for each of the dates therein set forth.

6. The Commission, instead of finding plaintiff in error's net income to be as set out in (b) of Specification of Error No. 4, should have found that plaintiff in error's net income from its intrastate business available for a return, was in no year excessive and was not more than the following amounts in each of the following years:

1925, $6,014,180; 1926, $6,726,922; 1927, $7,260,885; 1928, $8,266,094; 1929, $8,200,940; 1930, $8,068,933; 1931, $8,115,568; 1932, $7,086,738; 1933, $6,160,952.

7. The Commission erred in finding that plaintiff in error's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

1925, 8.95 per cent; 1926, 9.01 per cent; 1927, 8.79 per cent; 1928, 8.57 per cent; 1929, 8.09 per cent; 1930, 7.52 per cent; 1931, 7.64 per cent; 1932, 6.18 per cent; 1933, 5.51 per cent.

The rates of return so found by the Commission are higher than the rates of return actually earned by plaintiff in error upon such property, in that, as shown by the evidence, the Commission found the fair value of plaintiff in error's intrastate property in each of such years to be too low as shown in Specification of Error No. 5 hereof, and found plaintiff in error's net income for each of such years to be substantially higher than it actually was, as shown in Specifications of Error Nos. 4(b) and 6 hereof.

[fol. 336] The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned by plaintiff in error upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, respectively, as hereinafter in Specification of Error No. 8 set forth.

8. The Commission erred in finding that plaintiff in error was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence that the rates of return at which plaintiff in error was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously evaluating plant items manufactured by Western Electric Company and included in plaintiff in error's telephone plant in each of the following respects.

(a) The Commission developed a trend for Western Electric prices from the prices of that company for telephone apparatus only and then applied such trend not only to plaintiff in error's telephone apparatus but to its lead covered cable and materials and supplies. This action resulted in undervaluing plaintiff in error's property.

[fol. 337] (b) The Commission having determined certain price trends for labor and material based upon the experience of manufacturers other than the Western Electric Company, applied such price trends to plaintiff in error's plant items of Western Electric manufacture, although it conclusively appeared from the evidence that Western Electric Company's prices were lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others, and that Western Electric Company's earnings in its Bell business were at all times reasonable.

(c) The Commission refused to give effect to an increase of approximately ten per cent in the price of telephone apparatus made by Western Electric Company under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Com-

panies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,409,000 in 1932. The Commission's action in rejecting such price increase can not be [fol. 338] justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

10. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

The actual cost of plaintiff in error's intrastate property (including cash working capital and materials and supplies as fixed by the Commission in said orders, but exclusive of construction work in progress) were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

11. The Commission erred in finding in its order of September 6, 1934 that plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intrastate services, exchange and toll, within the State of Ohio, the sum of $11,832,264 in excess of a fair return upon the fair value of its property and in ordering that plaintiff in error refund within ninety days therefrom the following amounts for the following years, to-wit:

[fol. 339]

	Exxchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
Total	$11,423,137.00	$409,127.00

There was no evidence in the case which justified any finding by the Commission that any refund should be made in any exchange or in the toll system with respect to any of the years in question, and no basis upon which the Commission's order for such refund can be sustained. The order of the Commission in this respect deprives plaintiff in error of its property without due process of law and denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

12. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the unreasonably low value of plaintiff in error's intrastate property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $316,090 from the allowance for right of way;

(b) By eliminating the sum of $3,490,905 on account of going concern value;

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $535,970;

(d) By excluding and deducting the sum of $3,296,181 from the amount of the undistributed construction expenditures.

[fol. 340] In each of the foregoing respects, the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

13. The Commission erred in said findings and orders by failing to include any allowance for the going concern value of plaintiff in error's intrastate property in any year. In its tentative value order of January 10, 1931, the Commission found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. It made the allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value, the Commission not only eliminated any allowance for going value, but reduced the fair value of plaintiff in error's intrastate property as tentatively fixed in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise. The Commission's refusal to value the property as a going concern has deprived plaintiff in error of its property without due process of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

14. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive,

(a) By excluding from such valuation the following amounts of money invested by plaintiff in error during such

respective years in telephone property in process of construction, viz:

[fol. 341] 1925, $2,161,109; 1926, $4,168,837; 1927, $3,658,921; 1928, $2,059,240; 1929, $2,992,501; 1930, $4,750,748; 1931, $4,874,625; 1932, $810,383; 1933, $2,606,456.

(b) By disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect to the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

(c) By limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

(d) By allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error.

(e) By allowing an inadequate amount for the item of plant supervision and tool expense.

The Commission's exclusion of such amounts deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

15. The Commission erred in finding that the actual existing depreciation in plaintiff in error's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted on account of the existing depreciation in plaintiff in error's intrastate property more than $4,000,000 in ex-
[fol. 342] cess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in vio-

lation of the Fourteenth Amendment to the Constitution of the United States.

For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

16. The Commission erroneously refused to include in plaintiff in error's necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of plaintiff in error's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

17. The Commission purported to allow in plaintiff in error's operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of four per cent per annum of plaintiff in error's depreciable intrastate property, although its actual allowance therefor was less than four per cent. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation in respect of plaintiff in error's intrastate property:

1925, $4,914,980; 1926, $5,371,921; 1927, $5,815,204; 1928, $6,457,602; 1929, $7,484,033; 1930, $8,247,474; 1931, $8,549,677; 1932, $6,892,986; 1933, $6,269,772.

[fol. 343] The Commission's action in these respects deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

18. Plaintiff in error's annual expense of depreciation was based upon evidence of service life and salvage of the

several classes of its depreciable property, which evidence was undisputed. The Commission erred in ignoring such evidence and in fixing arbitrarily what it states was a rate of four per cent per annum, although in fact less than that amount. In doing so, the Commission purported to adopt the retirement theory of depreciation accounting, but in fact based its allowances upon the experience of the company for a period antedating the period in controversy. The Commission's allowance for depreciation expense for the period 1925 to 1931 was $9,852,737 less than actual expense of retirements during that period. Plaintiff in error was entitled for the expense of depreciation to a sum substantially in excess of the expense of its retirements, and the action of the Commission in allowing less than such expense deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

19. The Commission erroneously refused to permit the deduction from plaintiff in error's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by plaintiff in error to the American Telephone and Telegraph Company on account of license contract services rendered by said company to plaintiff in error, viz:

1925, $732,429; 1926, $682,004; 1927, $741,006; 1928, $320,448; 1929, $175,773; 1930, $100,906; 1931, $94,350; 1932, $23,302.

Said sums of money were paid by plaintiff in error to said American Telephone and Telegraph Company for services [fol. 344] actually rendered by the latter to plaintiff in error, which services were required by plaintiff in error in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow plaintiff in error to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

20. The Commission erred in failing to make adjustments in plaintiff in error's expenses by way of increases

in its Federal Income Tax because of the disallowances shown in paragraphs 16 and 19, supra.

21. The reproduction cost new and the fair value of plaintiff in error's property as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, are less than the actual, true and correct reproduction cost new and fair value thereof and are therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of plaintiff in error's classes of property.

The Commission erred in overruling plaintiff in error's protest against said tentative value order.

22. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring, for the purpose of reducing plaintiff in error's future rates, that plaintiff in error file, effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission, such schedules of reduced rates for plaintiff in error's intratsate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date. This requirement of said last mentioned orders plaintiff in error complied with on April 17, 1934, by submitting to the Commission, under protest, "Rate and Revenue Data and Estimates."

[fol. 345] Said orders deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) The action of the Commission was an attempt to accomplish indirectly that which it could not directly do, viz.: to deprive plaintiff in error of the opportunity to earn a fair return upon the fair value of its property by reducing plaintiff in error's present rates, although they are now producing, as the Commission found in said orders, no more than a fair return on the present value of said property as found by the Commission.

(b) In said findings and orders of January 16 and March 1, 1934 the Commission found that for the year 1933 plaintiff in error was entitled to earn a return of 5½ per cent

upon the fair value of its intrastate property as fixed by the Commission for that year and that plaintiff in error's net income from said property for that year at its present rates did not exceed such a return. Any reduction in plaintiff in error's present rates would necessarily reduce its net income below the amount found by the Commission to be fair, and would be unjust and unreasonable.

(c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) Under the applicable Ohio statutes the Commission had no authority to require plaintiff in error to file schedules of rates effective retroactively.

(e) The action of the Commission in this respect was erroneous and in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

[fol. 346] (f) Such order attempts unlawfully to reduce plaintiff in error's rates for its present and future service, by ordering plaintiff in error to make effective, for such service, rates not in issue in any of the separate bond cases and in respect of which no hearing or proof has been had.

In addition, the hypothetical rates contained in the "Rate and Revenue Data and Estimates" which plaintiff in error was compelled to and did furnish to the Commission on April 17, 1934, could not lawfully be made the basis of any order fixing rates for the future for plaintiff in error for each of the following reasons:

(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to plaintiff in error's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of September 6, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount approximately $450,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

(b) The hypothetical rates contained in said "Rate and Revenue Data and Estimates," if they had been in effect

during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper for said years respectively, either in its said orders of January 16 and March 1, 1934, its order of July 5, 1934, or its order of September 6, 1934.

(c) Many of the decreases shown in the hypothetical rates in said "Rate and Revenue Data and Estimates" are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its order of July 5, 1934, and September 6, 1934, required refunds to be made only with respect to rates made effective pursuant to bond, said hypothetical rates could have no application to the orders of the Commission as now modified.

[fol. 347] (d) The Commission had no right to fix rates for plaintiff in error's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of plaintiff in eror for the year 1925. In determining rates for the present and future the Commission was required to consider the fair value of plaintiff in error's property, its revenues, expenses and net income for the most recent period available. Although the Commission, in determining the refunds to be ordered, found even on the low value of plaintiff in error's intrastate property as fixed by the Commission for the year 1933, and upon the Commission's own findings in respect of revenues, expenses and net income for that year, that plaintiff in error was earning only a barely compensatory return for that year and therefore upon such finding made no order of refund against plaintiff in error for the year 1933, nevertheless, the Commission has refused to consider and give effect to the same evidence, in respect of plaintiff in error's present and future rates.

23. The Commission erred in its findings and orders in failing to continue the existing rates of plaintiff in error in effect for the present and future and in overruling the written requests of plaintiff in error so to do filed in this cause on February 17, July 31 and August 29, 1934.

Plaintiff in error showed the Commission that if permitted it would prove that if either of the revisions of rates proposed by the Commission should be made effective the result would be to reduce plaintiff in error's net income from its intrastate business in Ohio for the year 1934 by

more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio. The Commission found that for the year 1933, plaintiff in error had earned only a barely compensatory return.

It was the duty of the Commission under the evidence in this cause and its own findings to determine that the existing rates of plaintiff in error were no more than just and lawful rates to be charged for the present and future until [fol. 348] modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, plaintiff in error was entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934, and thereby to prove that any such reduction would be unlawful and unreasonable.

The action of the Commission in denying plaintiff in error's request and in requiring it to render future services in Ohio at admittedly confiscatory rates has deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

24. The Commission erred in overruling, denying and in failing to comply with plaintiff in error's several applications and requests filed on February 17, July 31, August 29, and September 25, 1934, asking: (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be no more than just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the requests theretofore made by it and thereby renewed to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where plaintiff in error was and is collecting rates pursuant to bonds; and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said

findings and order of January 16, 1934, and the Commission's method of applying the same, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said [fol. 349] cause, and to which information plaintiff in error had never had access and as to which method it has never been informed.

The action of the Commission in so denying said applications and requests has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

25. The Commission erred in requiring plaintiff in error to repay unstated portions of its intrastate toll rates collected under bond "to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service." Plaintiff in error cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by it to make any refunds except to persons who are its subscribers or patrons.

26. Plaintiff in error has been denied a fair trial and hearing in respect of the fair value of its property; it has been denied a fair trial and hearing in respect of whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond and it has been denied any trial with respect to the just and reasonable rates for its present and future service. Such denials have resulted in depriving plaintiff in error of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

27. The Commission erred in its order of September 6, 1934 in requiring the repayment by plaintiff in error to its intrastate toll users of the sum of $232,282 for the year 1925 and the sum of $176,845 for the year 1926 without [fol. 350] having made a determination of the fair value

of plaintiff in error's property and its revenues, expenses and net income in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that plaintiff in error had, in any year, made any excessive earnings in its toll system.

Plaintiff in error demanded the right to prove the fair value of its property used in rendering its intrastate toll service and to show the net income from such property. The Commission refused to receive such evidence. Therefore, it could make no valid order requiring any refunds to be made by respondent on account of toll rates collected under bond and the Commission's orders in this respect deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

28. The Commission erred in its order of September 6, 1934 in the following respects and each thereof:

(a) It denied the protest and application and petition of the plaintiff in error asking, for the reasons and upon the grounds set forth therein a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein upon July 5, 1934;

(b) In finding, as set forth in said order of September 6, 1934, that it had accorded plaintiff in error ample opportunity to examine and consider all necessary and pertinent information requested in plaintiff in error's application and request directed to the Commission's order of July 5, 1934, and in overruling said application and request;

(c) In overruling the verified return of plaintiff in error to the rule to show cause contained in the Commission's findings and order of July 5, 1934 and the prayer thereof;

(d) In ordering that all protests and objections to the Commission's finding of July 5, 1934, filed and made by [fol. 351] plaintiff in error, inconsistent with the order of September 6, 1934, be overruled.

29. The Commission further erred in overruling on October 19, 1934, (a) the protest, application and petition of plaintiff in error for a rehearing filed on October 1, 1934, and (b) its said application for a stay, postponement and suspension of the enforcement of the orders of the Public

Utilities Commission of Ohio in so far as they order and direct plaintiff in error to make the repayments and refunds ordered by the Commission.

In each and all of the foregoing respects complained of, and in denying plaintiff in error's protests, applications and petitions for rehearing, the said proceedings, acts, findings and orders of the Commission and each and all thereof affect materially the substantial rights of plaintiff in error, are erroneous and prejudicial to it and are unlawful, unreasonable and are not supported by evidence, are against the weight of the evidence and contrary to the evidence and the law and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and deprive it of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for a rehearing filed by it in cause No. 3307 on the docket of the Commission.

Wherefore, plaintiff in error prays that said findings and orders of defendant in error, the Public Utilities Commission of Ohio, made and entered in said cause No. 3307 on September 6, as well as the orders of January 16, March 1, July 5 and July 9, 1934, in so far as said findings and orders [fol. 352] form the basis for or are incorporated into the findings and order of September 6, 1934, and each of them, be reversed, vacated and set aside by this Court as unlawful and unreasonable and that plaintiff in error may be restored to all things lost by reason thereof.

The Ohio Bell Telephone Company, Plaintiff in Error, by Randolph Eide, President, Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

Duly sworn to by Rudolph Eide. Jurat omitted in printing.

[fol. 353] IN SUPREME COURT OF OHIO

[Title omitted]

PRÆCIPE FOR SUMMONS IN ERROR

To the Clerk:

Issue summons in error in this cause for Public Utilities Commission of Ohio, Columbus, Ohio, defendant in error, directed to the Sheriff of Franklin County, Ohio, returnable according to law.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Plaintiff in Error.

[fol. 354] IN SUPREME COURT OF OHIO

[Title omitted]

APPLICATION OF THE OHIO BELL TELEPHONE COMPANY FOR A STAY OF THE EXECUTION OF THE FINDINGS AND ORDER OF THE PUBLIC UTILITIES COMMISSION OF OHIO OF SEPTEMBER 6, 1934, IN CAUSE NUMBER 3307

Plaintiff in error files this, its application for an order staying, postponing and suspending the enforcement of, and excusing plaintiff in error from obeying, the order of the Public Utilities Commission of Ohio of September 6, 1934, in Cause No. 3307 on the docket of said Commission, as well as the findings and orders of the Commission of January 16, March 1, July 5 and 9, 1934, in so far as said findings and orders form the basis for or are incorporated into the findings and order of September 6, 1934, except in so far as they require plaintiff in error to furnish information respecting collections under bond prior to June 30, 1925.

Plaintiff in error in support of this application incorporates herein by reference and makes a part hereof, as fully as if herein set forth at length, the petition in error foregoing, and further shows the Court:

[fol. 355] 1. There are pending in this Court four petitions in error to reverse, vacate and set aside the findings and orders of the Commission made in this cause on January 16, March 1, July 5, July 9 and September 6, 1934, respectively, which orders are now in effect. The petition

in error numbered 24,694 seeks to reverse the orders of the Commission of January 16 and March 1, 1934, in their entirety; the petition in error numbered 24,695 seeks to reverse said last mentioned findings and orders as to the fair value of plaintiff in error's property used and useful in the service of the public in the State of Ohio; the petition in error numbered 25,023 seeks to reverse the findings and orders of the Commission of July 5 and 9, 1934, respectively, as well as the findings and orders of the Commission of January 16, 1934, and March 1, 1934, in so far as said findings and orders, or either of them, is modified or supplemented by or forms a basis for or is incorporated into said orders of July 5 and July 9, 1934, and the petition in error filed contemporaneously herewith seeks to reverse the findings and order of the Commission on September 6, 1934, as well as all said earlier findings and orders of the Commission in so far as they form a basis for or are incorporated into said order of September 6, 1934.

2. In its order of September 6, 1934, the Commission ordered plaintiff in error to refund for the years 1925 to 1932, inclusive, the sum of $11,423,137 to its exchange subscribers and the sum of $409,127 for the years 1925 and 1926 to its toll patrons, in the aggregate the sum of $11,832,264, with interest, being a portion of increases in plaintiff in error's rates put into effect pursuant to the Robinson and Pence laws.

3. Plaintiff in error avers that in making said orders and ordering said refunds, the Commission committed grave errors and that its orders, and each and every thereof, are unlawful, unreasonable, in violation of the applicable statutes of Ohio and of Section 1 of Article 1 of the Constitution of Ohio, and deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons and upon the grounds specifically set forth in the petition in error foregoing, among which are the following:

[fol. 356] (a) Plaintiff in error was denied a fair trial by the Commission in respect of the valuation of its property upon which the refunds ordered were based. The Commission first determined a value for plaintiff in error's property for the year 1925. In each subsequent year the Commission admittedly based its valuation upon undisclosed

price trend information. Despite repeated written requests that the Commission disclose the information upon which its price trends were based, it has consistently refused to make any disclosure in respect thereof. Therefore, plaintiff in error's valuations which control the refunds ordered are, for all years subsequent to 1925, based upon evidence never disclosed and in no manner made a part of the record and therefore plaintiff in error has been denied due process of law.

(b) Plaintiff in error has been denied a fair trial with respect to the refunds ordered, in that the Commission has not determined that any protested rate in any protesting exchange in any year was excessive. The Robinson and Pence laws provide for the repayment by a utility of such portion of an increased rate, collected under bond, as the Commission shall finally have determined to be excessive. Plaintiff in error's bonds, executed in respect of particular rates, are similarly conditioned for the repayment of the excess portion of such rates. Despite repeated written requests of plaintiff in error that the Commission hear separate evidence as to the reasonableness of such protested rates, the Commission has at all times refused so to do. Instead, the Commission has endeavored by arbitrary accounting methods and calculations to apportion an alleged company-wide excess of earnings among plaintiff in error's several protesting exchanges and its toll system. Plaintiff in error has been denied a fair trial in respect of its separate, protested rates and in that respect has been deprived of its property without due process of law.

(c) Plaintiff in error has been deprived of a fair trial with respect to the refunds ordered to be made to its toll users in that the Commission, without any evidence as to the value of plaintiff in error's toll property or the net in- [fol. 357] come therefrom, has arbitrarily ordered refunds to plaintiff in error's toll users for the years 1925 and 1926.

(d) The minimum fair value of plaintiff in error's property used and useful in the service of the public in the State of Ohio for each of the years 1925 to 1933, inclusive, was at least $30,000,000 in excess of the value thereof found by the Commission for said years respectively.

(e) The Commission's finding of value of such property as of June 30, 1925, was admittedly $5,000,000 below its actual cost. As of November 30, 1933, its finding therefor was admittedly $35,000,000 below actual cost.

(f) Expenses actually incurred by plaintiff in error during the period 1925 to 1933, inclusive, in the operation of its intrastate business have been disallowed by the Commission in the aggregate sum of approximately $20,000,000. In respect of the expense of depreciation alone the Commission's allowances for the years 1925 to 1931, inclusive, were approximately $10,000,000 less than plaintiff in error's actual retirements during that period.

Plaintiff in error avers that all the foregoing important questions and others, presented by the petition in error, are substantial and meritorious, warrant the consideration of this Court and, in the judgment of plaintiff in error, require a reversal of the orders of the Commission. This application is filed, not for purposes of delay, but to prevent the irreparable loss which will be borne by plaintiff in error, if said orders shall be enforced before the judgment of this Court shall be rendered thereupon.

4. Unless this court shall grant plaintiff in error a stay of the execution of said order of September 6, 1934, as prayed for herein, until the final decision of this case by this court, plaintiff in error will suffer irreparable loss, injury and damage in the following respects:

1st. It will be compelled to make refunds within 90 days from September 6, 1934, to its subscribers and patrons in the aggregate sum of $11,832,264 with interest. Plaintiff in error will be compelled to make said payments to more than 100,000 of its subscribers, the great majority of the [fol. 358] payments being in relatively small amounts. In the event of a reversal of this cause and a determination by this court that plaintiff in error was not legally required to make said refunds, it will be impossible for plaintiff in error to recover the sums so paid to these numerous persons.

2nd. If plaintiff in error should refuse to comply with said order of the Commission it will subject itself to the drastic penalties provided by the Ohio law for such failure, to-wit: a penalty not to exceed $1000 for each such refusal, and each day's refusal will constitute a separate offense.

5. Under the Robinson and Pence laws, plaintiff in error has filed with the Commission bonds in the aggregate penal sum of $14,166,768, all of which have been approved by the

Commission and are now in full force and effect, conditioned for the repayment by plaintiff in error of such portion of its rates increased pursuant to the Robinson and Pence laws as thereafter, upon final hearing, should be determined by the Commission to be unreasonable and excessive. As of November 30, 1933, plaintiff in error had intrastate plant and property in Ohio of a value substantially in excess of $160,000,000, found by the Commission as of that date to be of the approximate value of $126,000,000; it had a bonded debt of less than $5,000,000, not in default, which debt constitutes the only lien upon said property; its total outstanding debt as of October 1, 1934 other than said bonded indebtedness and any possible obligation on said bonds given for refunds, was less than $5,250,000. It is submitted that the aggregate penalty of such bonds and the resources of plaintiff in error are such that it is not necessary for this Court, as a condition of granting this application, to order the filing of any other or further bond. Nevertheless, plaintiff in error offers to comply with such lawful and reasonable terms as to bond or otherwise as may be imposed by the Court as a condition to the granting of this application.

* * * * * * *

[fol. 359] Wherefore, plaintiff in error prays that an order be entered herein staying, postponing and suspending the execution of the orders of the Commission of September 6, 1934, and its orders of January 16, March 1, July 5 and 9, 1934 in so far as said orders form the basis of or are incorporated into the order of September 6, 1934, except in so far as they require information respecting collections under bond prior to June 30, 1925, which stay and suspension shall remain in effect until the final decision of this cause by this Court.

The Ohio Bell Telephone Company, Plaintiff in Error, by Randolph Eide, President, Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

[fols. 360-362] *Duly sworn to by Randolph Eide. Jurat omitted in printing.*

[fol. 363] **Exhibits "A" to "U," inc., to Petition in Error**

EXHIBIT A.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Karl E. Burr and W. H. Thompson, Attorneys for The Ohio Bell Telephone Company.

Gilbert Bettman, Attorney General.

T. J. Herbert and A. M. Calland, Present Counsel for the State of Ohio.

Charles C. Crabbe and Edward C. Turner, Former Attorneys General.

W. S. McConnaughey and Fred Postle, Former Counsel for the State of Ohio.

Frank W. Geiger, Chairman.

John W. Bricker, William Klinger, Commissioners.

[fol. 364] This action is commonly known as the State-Wide Case of The Ohio Bell Telephone Company, being properly so designated from the fact that it involves an inquiry into the value of the property and rates of that company for both exchange and toll service throughout the State of Ohio.

Historical

Prior to the year 1914, Bell System service in Ohio was limited to the portions of the state served by The Cleveland Telephone Company, the Central Union Telephone Company, the Central District Printing and Telegraph Company and The Cincinnati & Suburban Bell Telephone Company, (the latter still operating as a separate com-

pany). At the same time and operating independently in the same territory in many localities were other telephone companies.

In July, 1914, a number of companies of the kind last referred to were consolidated under the name of The Ohio State Telephone Company. In December 1920, The Cleveland Telephone Company (its name having been changed to The Ohio Bell Telephone Company) purchased the Ohio property of Central Union Telephone Company. In September, 1921, The Ohio Bell Telephone Company and The Ohio State Telephone Company were consolidated as The Ohio Bell Telephone Company and that company thereafter purchased additional telephone properties. Even after these extensive consolidations there remained more than 450 other independent telephone companies operating in the state.

As soon as The Ohio Bell Telephone Company (consolidated) was ready to unify the service in communities having a dual service, it filed with the Commission an application to determine the rates chargeable for such unified service. In the case of some of the exchanges the municipalities concerned contested the proposed rates and a hearing was instituted. Subsequently, following the 1923 amendment of Section 614-20 of the Code (110 O. L. 366), the company filed new rate schedules for many of its ex-[fol. 365] changes; some of which were protested by the municipalities concerned and were collected under bond, after the end of the statutory period of suspension. This was true also with respect to the company's new schedule of toll rates for its toll service throughout the entire state.

As a result, many extensive hearings were had by the Commission, and in the two years prior to October, 1924, several thousand pages of testimony were taken and an even greater number of pages of exhibits offered in evidence.

On October 14, 1924, the Commission, having found that many issues were common to all of the then pending Bell cases, both toll and exchange, ordered that they be consolidated and that the examination into the rates proceed as a single State-Wide case involving all the rates and services, exchange and toll, of The Ohio Bell Telephone Company, including those then under investigation, and that the evidence theretofore introduced, in the several separate

cases, be considered and made a part of the record in the consolidated cases.

This order concluded as follows:

"Ordered, that, on or before December first, nineteen hundred and twenty-four, said The Ohio Bell Telephone Company furnish to this commission and file in this cause, as a part of the evidence therein, a complete inventory of all of its property located in the state of Ohio and used and useful and to be used and useful, in the furnishing of telephone service therein, both toll and exchange, classified according to the classification adopted and prescribed by this commission and the Interstate Commerce Commission for telephone companies, and that, upon the filing of such inventory, this consolidated case proceed to a hearing for the determination of the fair value of said property and of the just and reasonable rates for the service thereby to be furnished by said company to its patrons throughout the state of Ohio."

By this order, forty-three separate cases then pending, the majority of which were for increased rates, were consolidated into the State-Wide case.

[fol. 366] Since the order of consolidation the company has made additional filings of exchange rates. Some were protested and are now collected under bond.

The Company has filed and offered in evidence an inventory and appraisal of its entire property. In November, 1925, under a special legislative act, W. J. Hagenah was employed as the Commission's engineer to appraise the company's property.

In February, 1927, the case was submitted to the Commission for the fixing of a tentative value, but before this valuation was announced, the then Attorney General requested that the case be reopened and further valuation testimony taken. Since that date much time has been consumed in taking testimony on behalf of the State and with rebuttal evidence on behalf of the Company, and the case has been finally submitted to the present Commission for its determination of a valuation.

The following tables show the cities and towns with their population according to the 1920 census; the number of subscriber's stations in 1925 and the number as of June 30,

1930, involved in the present consolidated case. Each telephone is a "subscriber's station."

[fol. 367] (A) Under This Heading Are All the Cases Originally Included in Case 3307

Exchange	Population 1920 Census	No. of Stations June 30, 1925	No. of Stations June 30 1930
Lancaster	16,000	3,882	4,264
Ripley	2,000	420	441
Massillon	19,000	4,964	6,046
Youngstown	174,000	23,780	33,995
Marietta	15,000	4,049	4,614
Middletown	31,000	5,254	6,677
Akron (Incl. Barberton)	231,000	A-23,473	A-43,800
		B- 1,593	B- 2,601
Toledo	313,000	47,275	64,369
Dayton	185,000	29,530	45,836
Cleveland	1,010,000	178,091	254,096
Piqua	16,000	2,647	3,286
Steubenville	32,000	5,786	8,157
Niles	17,000	2,233	2,812
Girard	7,000	938	1,353
Toronto	5,000	689	914
E. Palestine	6,000	743	848
So. Charleston	1,267	402	398
Alton	122	67	101
Gahanna	347	168	216
Worthington	705	528	697
New Albany	200	172	189
Dublin	211	163	206
Galloway	280	118	111
Harrisburg	258	285	270
Hilliards	451	193	244
Lockbourne	279	90	79
Reynoldsburg	491	258	321
Groveport	671	270	280
Pickerington	358	146	168
South Solon	442	89	92
Canal Winchester	791	690	678
Hubbard	3,320	405	618
Total	2,089,193	339,391	488,777

[fol. 368] (B) Exchanges Having A. U. R. P. Case Numbers of a Date Subsequent to Case #3307 But by Orders of the Commission, Made a Part of the Consolidated Case.

Coshocton	12,000		2,070	2,417
London	4,000		1,542	1,633
Mentor	851		....	597
Sedalia	250	(Approx.)	146	135
Washington C. H.	8,000		2,831	2,833
Westerville	2,000		795	861
Canton	117,000		17,774	22,070
Total	144,101		25,158	30,546

(C) Exchanges Having A.U.R.P. Case Numbers of a Date Subsequent to Case #3307 Not Made a Part of the State-Wide Case, the Commission Orders Merely Stating That Hearings Are Deferred for Further Order.

Bellaire	16,000	2,276	2,192
Bridgeport	4,000	1,074	1,185
Kent	7,000	1,970	2,421
Martins Ferry	16,000	1,771	1,957
Osborn	1,059	204	312
Canfield	806	466	469
Columbus	299,000	63,749	75,936
Springfield	73,000	11,850	14,138
Total	416,865	83,360	98,610
Grand Total	2,650,159	447,909	617,933

It will thus be seen that the consolidated case involves a total population of 2,650,159, served by 447,909 stations in 1925, since increased so that as of June 30, 1930, there were 617,933 stations.

The population affected is greater than shown by the census figures for the reason that the rural subscribers of an exchange are not enumerated in the census of the city or town where the exchange is located.

The number involved in the consolidated case is even greater, insofar as that case affects the rates for all of the company's subscribers, wherever located; the total num-

[fol. 369] ber of stations as of June 30, 1930, being 717,832, with a corresponding increased population.

The case also involves the company's pending application for the fixing by the Commission of just and reasonable Service Connection Charges (Cases Nos. 1368—1728—1900).

Duty of the Commission

While the ultimate purpose of all the testimony taken and investigation made over a period of many years is to arrive at what may be the just and reasonable rates to be paid to the Company for the services furnished by it, it becomes necessary, under the law, to first determine what is the fair value of the property of The Ohio Bell Telephone Company used and useful in furnishing its service as of a date certain, which has been fixed as June 30, 1925.

After we have arrived at what is the fair value of the property, additional and further investigation will be necessary in order to determine what are the just and reasonable rates to be charged the patrons of the company.

The Ohio law provides that the rates shall be fixed "with due regard, among other things, to the value of all the property of the public utility actually used and useful for the convenience of the public." In ascertaining this, the Commission is permitted to consider only the evidence submitted and now in the record.

Reproduction Cost New and Present Condition

Mr. G. B. Williams and Mr. W. F. Sloan were two of the engineers testifying on behalf of the company. Mr. W. J. Hagenah and Mr. H. R. Allensworth, engineers, were State witnesses. In addition to these engineers, there appeared for the company: Mr. Randolph Eide, Mr. John Uprichard, Mr. F. M. Stephens, Mr. Walter G. Schneider, Mr. Phillip Hogan, Mr. E. F. Morrill and Mr. Ernest L. Myers and for the State: Robert K. Morse, Victor A. Dorsey and Frank R. [fol. 370] McBerty. All these witnesses testified, as experts, to various features of the inventory and valuation of the property.

There was but one complete inventory submitted upon which all the appraisals were based. This inventory was prepared by the company's witness, G. B. Williams, and was accepted by all witnesses as correct.

The several engineers have estimated the value of the property as of June 30, 1925, as follows:

	Total Reproduction Cost New	Present Condition
Mr. Williams	$157,657,634.00	$144,995,146.00
Mr. Sloan	156,073,269.00	142,760,154.00
Mr. Hagenah	127,800,408.00	112,713,483.00
Mr. Allensworth	104,487,936.00	

Mr. Allensworth made no appraisal of the property in present condition.

The Commission is required to ascertain the reproduction cost of the physical property of the utility. That cost properly depreciated is not necessarily the "fair value" of the utility, for rate making purposes, but is evidence of value, which must be given its proper weight, when considered with all other evidence in the case.

The Commission comes now to the determination, pursuant to the provisions of Section 499-12 of the General Code of Ohio, of the value of the property used and useful by The Ohio Bell Telephone Company in the territory involved.

The Commission has considered the evidence in the case consisting of approximately 12,000 pages of testimony and a like number of pages of exhibits, introduced by the company and the State, being fully advised by argument of counsel and by brief as to the law of the case.

The Commission in arriving at a determination of the value of the company's property used and useful, has been guided by the statutes of Ohio (499-9 et seq.) and the decisions of the Courts fixing the principles to be followed in such valuations and has given great weight to the theory of reproduction cost new less depreciation.

[fol. 371] First—Reproduction Cost New of Company's Property

The company's witnesses presented testimony supporting a reproduction cost new of approximately $157,657,-634.00 and depreciated the property substantially 10% to fix the value as of June 30, 1925, the date certain in this investigation, at $144,995,146.00. Other witnesses for the company varied slightly from these figures, but Mr. Wil-

liams appeared as the company's chief appraisal engineer and his figures are used in this consideration.

The only witness for the State who made a complete appraisal and inspection of the property was William E. Hagenah, who found a reproduction cost new of $127,800,408.00 and depreciated the same 13%, to fix the value on the date certain at $112,713,483.00.

State's witness, Allensworth, did not make a complete appraisal of the company's property, but eliminated certain items allowed by the other witnesses, readjusted some and accepted the company's engineers' items in other cases to arrive at a reproduction cost new of $104,476,804.27 and applied Hagenah's depreciation figure to arrive at a present worth of $91,061,900.69.

State's witness, McBerty, confined his examination and testimony to the central office equipment and PBX exchanges and in those two items found a value of practically $6,476,000.00 less than allowed by State's witness, Hagenah.

The Commission in considering the testimony of all the witnesses, the amount of work given to this investigation, the methods used and the reputation and standing of the engineers, has concluded that State's witness, Hagenah, has based his valuations upon principles fair both to the company and to the public and in most respects the Commission has accepted his testimony and findings as to valuation.

Second—Inventory

The inventory submitted by the company's witness, Williams, is complete and amazingly detailed. A complete check was made by State's witness, Hagenah, and other [fol. 372] State's witnesses of the inventory and after that check the company's inventory was acceptable to all of the State's engineers and is therefore accepted by this Commission as the basis for valuation.

Third—Unit Costs

For the consideration of the Commission, this item is divided into material costs and labor costs.

(a) Material Costs:

The Company's witnesses fixed the material costs as largely those costs of The Western Electric Company.

State's witness, Hagenah, checked these unit costs as against the cost of other manufacturers of like equipment and testified that in his judgment The Western Electric Company costs were fair and reasonable.

These Western Electric costs have been subject to attack in many cases. Likewise the many provisions of The Western Electric contracts with the subsidiary Bell companies have been subject to attack and close scrutiny by Courts and Commissions as to the reasonableness of their terms and as to the adequacy of the consideration.

Both the unit costs and the many provisions of the various contracts have been approved by Courts and Commissions generally throughout the country.

(b) Labor Costs:

In the item of labor costs, there is a great divergence between the company's witnesses and the State's witnesses. The engineers for the company claim that the efficiency and performance of labor are reflected in their analysis of a large number of work orders covering a considerable volume of work done by the company and from this analysis they arrive at their labor units.

State's engineer, Hagenah, fixes his labor units upon the basis that this reproduction program is a continuous construction job and that the company's witnesses have fixed their labor units upon piecemeal and reconstruction work [fol. 373] which involves dismantling and other items, not met in a complete job of constructing the system as a whole, which is the basis of this valuation. He arrives at much lower labor units.

The Commission has adopted State's witness Hagenah's labor units as the proper measure to apply in the reconstruction cost new of the complete Bell system.

Fourth—Plant Supervision

In the item of plant supervision and tool expenses, the same differences between the witnesses of the company and of the State, appear and the same reason is given for the lower figure fixed by State's witness, Hagenah, and accepted by the Commission, for the reason that this is an original complete construction program of the whole Bell system.

Fifth—Per Cent Condition

The company's witnesses, Sloan, Williams, Stevens and Myers, have fixed the per cent condition between 89½ and 93.4 per cent. State's witness, Hagenah, after an exhaustive study, taking into consideration the development of the art, obsolescence and all the other statutory requirements as to depreciation, arrives at a per cent condition of 87% or a depreciation from the reproduction cost new of the company's property of approximately 13%.

State's witness Hagenah's testimony on this point was direct, clear, based upon a thorough observation and his judgment is supported by an experience unexcelled by any other engineer in the case. The other State's witnesses have concurred in the per cent condition of the property as fixed by witness, Hagenah.

Sixth—Right-of-Way

The company's witnesses and State's witness, Hagenah, have testified that for the item of right-of-way, 3% should be allowed upon the outside plant, that even though the company is given the right, by statute, to construct its lines along the highways, there are certain costs incident to secur- [fol. 374] ing rights-of-way across private property or burdening the abutting or adjacent property owners, even though the lines might be constructed along the highway. These items are detailed by the various engineers.

It has likewise been the practice of the Commission's engineers in all telephone cases to allow 3% of the value of the outside plant for right-of-way. The Commission in this case, is following the practice of its engineers and has accepted the judgment of the company's witnesses along with that of the State's witness, Hagenah. State's witness, Hagenah, particularly made a complete study of the company's books and of their property to determine the reasonableness of this 3% item and it is therefore accepted by the Commission as the proper measure of the value of the right-of-way.

Seventh—Land

State's witness, Hagenah, addressed a circular letter to the City Attorneys of all the large Cities of Ohio, including every community with a population of over 25,000 asking for a report on the valuation made by the company and the

standing of real estate brokers, whose judgment was the basis of the company's valuation. In practically every instance the brokers were found to be men of high standing and of good repute in their communities and the values were determined to be substantially correct and were acceptable to the cities' attorneys in the case. As a result of that investigation, witness, Hagenah, accepted the figures of the company on land value.

Exception was taken by the Attorney General to the inclusion in the land valuation of those properties held under 99-year lease by the company. It appears from the record that the valuation placed upon such leasehold interests by the company was not the value of the fee simple title to the property, but the actual value of the leasehold interest, which the company is entitled to include in its rate base. There has been deducted, however, from the value of the real estate submitted by the company, the value of the property [fol. 375] of the company not used and useful on the date certain. The value of such property as eliminated from the rate base is $686,613.00, leaving a total land value of $3,256,-854.00. The statutes of the State are explicit that only such property as is used and useful in rendering service to the public shall be included in the rate base. Land purchased by the company for future use, if not actually used on the date certain must be excluded. The position of the Commission is substantially the same as that taken by State's witness, Allensworth, in his elimination of this item. As soon as the property is placed in use by the company, it would appear in any subsequent consideration of the net additions by the company in the determination of the reasonableness of the rate for any particular period of time.

Eight—Underground Conduit

State's witness, Allensworth, in his consideration of the item of underground conduit deducted from the cost of cutting pavement and replacing the same which was set up in the company's appraisal on the basis of streets now paved, but which were not paved at the time the actual construction was made. State's witness, Hagenah, has not included this item in his appraisal and the Commission is of the opinion that the law supports this position and has accepted the valuation as determined by State's witnesses.

Ninth—Undistributed Construction Costs

There is not the variance among the witnesses for the company and the State in regard to undistributed construction costs that we find in many other items in this case. The various witnesses have estimated this item as follows:

Williams and Schneider	17.11%
Sloan	16.67%
Hagenah	17.25%
Allensworth	14.54%

This allowance covers interest and taxes during construction, engineering, general expenses, insurance, injuries, [fol. 376] damages, administrative and legal expenses, organization and contingencies and omissions. These items have been separated by the various witnesses both for the company and the State and detailed.

The testimony of the several witnesses in reference to the various items of expenses covered by the several percentages arrived at by each is given in much detail in the record and thorough investigation seems to have been made by the witness, Hagenah, and the Commission will accept his figures even though they be slightly in excess of the figures offered by the witnesses for the company.

This case involves a five year construction program and many items, especially interest and taxes during construction would necessarily be greater in percentage than the amounts usually used by this Commission and heretofore adopted by the Commission in the determination of other cases.

It is proper here to point out the fact that the Commission, in the analysis of the evidence given in this case, is not permitted to go beyond the record made by the several witnesses offered respectively by the company and by the State and the Commission does not intend that this allowance shall be indicative of a departure by the Commission from principles heretofore announced in other cases or from percentages covering these items or the items covered, that may have been used by the Commission's engineers and adopted by the Commission when other cases involving reproduction value have been under consideration.

It will be observed that no engineers, testifying as to these percentages included within the items so covered, the item of "going concern value" or "going value" and the Commis-

sion may not, of its own motion, include in the items covered by these per cents, the item of going value, when the witnesses, with the possible exception of Mr. Allensworth, have each severally stated that it was not considered in their estimate of per cent.

[fol. 377] Tenth—Working Capital

There is a variance again among the witnesses for the company and the State as to the amount which should be allowed for working capital. Company's witnesses—Williams claimed — $6,335,000.00 — Sloan, $4,000,000.00. State's witness, Hagenah, is willing to allow $3,500,000.00 and State's witness, Allensworth, $2,631,000.00.

Engineer Hagenah has considered five well known and approved methods in arriving at this figure. In view of the fact that the company collects in advance for its rents and has a credit contract with The Western Electric Company, giving thirty to sixty days' credit on all materials purchased (and the Commission has allowed the unit costs incurred under that contract) the Commission accepts the figures of State's witness, Hagenah, even though it is a lower percentage of allowance than the 5% which has been the practice of the Commission's engineers in most telephone cases.

Eleventh—Construction Work in Progress

The Commission has disallowed any valuation for construction work in progress until the same becomes used and useful in rendering service to the public. This is the rule which the Commission has followed in all cases and in our opinion is supported by the law. Construction work in progress will properly be taken into consideration, in the projection of the valuation throughout the years when the rate is being considered, by the inclusion of such property as it becomes used and useful.

Twelfth—Going Concern Value

This item appears in the inventory under the head of "cost of establishing business" by the company's engineers and under the head of "going concern value," by Mr. Hagenah, and is estimated by Mr. Williams at $20,768,158.00, by Mr. Sloan at $22,493,551.00 and by Mr.

Hagenah at $11,260,000.00 while it is totally omitted by Mr. Allensworth.

[fol. 378] It is not possible here, to detail how the several witnesses arrived at their conclusions. The testimony of Mr. Schneider, a company witness, centers about his Exhibit No. 3 and will be found in the record beginning at page 905 and extending to page 935, also pages 272 and 273.

Mr. Sloan testified as to going concern value on pages 1545, 1546 and 1561. Mr. Williams, on page 959, testified that he has not made a separate study of his own, but has given considerable thought to the value prepared by Schneider, which in his opinion represents a conservative value of the cost of establishing business. He also testified concerning the same value on pages 158-9. Mr. Hagenah allows a going concern value of $11,260,000.00, testifying on pages 2111, 2134 and also on page 2073. Mr. Allensworth on page 2839 states that he makes no allowance for any such item or reproduction cost, because of the fact that the records of the company do not show that the company has ever incurred any cost of establishing business that has not been absorbed ultimately as operating expenses.

The Law as to Going Concern Value

"'Going Value' or 'Going Concern Value' is the value which inheres in a plant where its business is established as distinguished from one which is yet to establish its business. The 'going value' of a business is property right, and should be considered in determining the value of the property upon which the owner has a right to make a fair return * * *. Included therein is the investment necessary to organizing and establishing the business which is not embraced in the value of its actual physical property. Des Moines Gas Co. vs. Des Moines, 238 U. S. 153, 35 Sup. Ct. Rep. 811; 59 Law. Ed. 1244."

Going concern value, so frequently appearing in rate cases has given rise to much controversy, both before Commissions and in the Courts. The Courts having recognized that some value should be attached to a utility over and above the cost of the physical structure, the difficulty

is to determine a just rule by which such a value shall be ascertained.

[fol. 379] All the engineers with the exception of Mr. Allensworth have considered substantially the same items in arriving at an estimate of the several percents allowed by them for going concern value, including therein the cost of securing and training of the company's employees, which would involve expenditure for instructions, bulletins, rules and regulations and kindred matters for their guidance in qualifying them to be efficient employees of the company, serving both it and the subscribers effectively.

Their estimate of the going concern value also includes costs listed by the engineers for the securing of subscribers and attaching them to the service so that they may become an integral part of the entire system. This cost is estimated by the engineers to include the expense of maintenance, traffic, commercial expenses, the cost of preliminary directories, station removals, changes, advertising, canvassing, soliciting and demonstrating to the subscriber the working of the system. Considering all these items, the several engineers arrived at the amounts above set out to cover this rather elusive general item of "going concern value."

The statute, contemplating as it does the reproduction of the "physical property" does not make going concern value an element, but we must yield to the repeated decisions of the Court that such value is a property right to be considered in determining the value of the property, upon which the owner has a right to make a fair return.

Mr. Hagenah states (Rec. page 2111):

"It is in my judgment necessary that provision be made for an allowance for the going concern value of an operating and revenue producing public utility. This is a part of the property that is being appraised in this instance. The Ohio Bell Telephone Company does have a substantial going concern value as of June 30, 1925. The allowance which I have made for this item is $11,260,000.00."

He further states:

"I have adopted 10% as the measure of going concern value for that item of property as defined in the Des Moines case. My allowance is $11,260,000.00."

[fol. 380] The Des Moines case referred to by Mr. Hagenah is the case above quoted, and it is not very clear upon this point.

It must be apparent that establishing the cost of going concern value on a percent of the entire property involved is not particularly scientific or illuminating, but this method seems to have been sanctioned by engineering usages and Court decisions.

Having attached considerable weight to Mr. Hagenah's testimony touching the reconstruction value of the physical plant, we may not disregard entirely his testimony or that of the other engineers as to going concern value, although we cannot endorse it in full.

Mr. Hagenah's testimony and the testimony of the other engineers, except Allensworth, has been based upon the theory that after the physical reproduction of the plant, it would be necessary for the company, in order to attach a profitable business to the bare bones of the structure, to do many things which the Commission does not believe would in fact be necessary.

The new plants theoretically reconstructed would not be required to begin operations in territories where the telephone and its advantages would be an unknown and strange instrument as it was forty years ago. There would be, awaiting the completed plant, not only a willing, but an anxious public, seeking connection.

Neither can we conceive that the situation would require a long and expensive education of operatives. There would be many qualified operators willing and anxious to take service. These, it is true, have been educated to a large extent through their former connection with the telephone business where their services were presumably, during that time, paid for by the company receiving the benefit of the same. This cost was chargeable against the operating expense account and should not be charged as an acquisition of capital. Telephone Company vs. Prendergast, 36 Federal, 54, Syl. 13.

The reproduction cost new theory as testified to by the engineers, when applied particularly to the items of going [fol. 381] concern value or the cost of establishing business, is too highly theoretical to be accepted in its entirety by this Commission as the basis for fixing such value. We are dealing here with a long established and successful

plant, rendering good service and must deal with the cost of attaching business under circumstances that may reasonably be expected to exist rather than under circumstances which we do not believe would in fact exist.

The Commission must consider the fact that were it not for the subscriber, the element of going concern value would not attach to the property and that the program of construction reasonably to be anticipated would not entail the expenditure of money for many of the items of intangible costs enumerated by the engineers, many of which are predicted upon an unintelligent and uneducated public.

The Commission, however, recognizes that there does enter into the fixing of value, an element of value, distinct from that of the actual physical property, in the established and assembled plant doing business and earning money and this element, being a property right, should be considered in making a proper allowance.

If a reconstruction were to take place theoretically, we should invoice the situation now existing and as it was when the telephone service was first inaugurated. We feel that no comparable expenditure of money or labor would need to be made to educate the help or to sell the service to the public.

If the engineers had developed testimony that would enable the Commission to determine the cost of proper departments and equipment necessary to receive the subscription of willing patrons, catalogue their names, open accounts, assign numbers, prepare telephone directories and do many other necessary things such as might complete the connection between patron and the operating plant—such cost not properly chargeable to operation, might well be considered to enable us to determine the cost of that intangible element known as "going concern value."

[fol. 382] The Commission has carefully examined the mass of figures submitted by the company's engineers to establish their claim of "going value." Their estimate includes so many elements that are based upon the company's claim for expenses theoretically to be incurred for items and conditions which the Commission deems unjustified that we are unable to find in their figures a satisfactory measuring stick.

Mr. Hagenah testified (R. page 2124) after speaking of his examination of decisions in other cases:

"These cases are very numerous and some can be found in the decisions of nearly every Public Service Commission of the United States and quite generally in the Federal Court decisions and in the decisions of the United States Supreme Court. They ranged from findings under 8% to over 15%. One instance the allowance is 30%. The average is approximately 10%."

It thus appears that Mr. Hagenah's estimate of going concern value is based upon an average of percents allowed in numerous cases which he has examined, but in none of the cases, so far as we have discovered, has there been a formula developed which can be applied to the evidence in this case.

The Commission, drawing as much aid as it can from the estimate of the various engineers have arrived at the conclusion that 3¾% of the reproduction value of the physical property would justly cover the expenses that are fairly incident to attaching to the bare bones of the physical structure the subscribers and business which will transmute it into a going concern.

This percent will cover those expenses necessarily incurred in the interim between the completion of the physical plant and the final attaching of its subscribers.

We therefore find the going concern value to be $3,592,040.00 instead of $20,000,000.00 or more testified to by the engineers of the company or the $11,260,000.00 testified to by Mr. Hagenah.

The recent case of Smith et al. vs. Illinois Bell Telephone Company, decided by the United States Supreme [fol. 383] Court, December 1, 1930, involved the valuation of the Bell Telephone property in the City of Chicago, which value was comparable to the values involved in this case. In that case the Commission allowed $4,196,067.00 for going value and the District Court on review found that "the amount allowed by the Commission $4,196,067.00 was the minimum allowance that could be made for going value."

This figure so found by the Illinois Commission and endorsed by the District Court was not referred to or in any way changed in the decision by the Supreme Court.

From this we may safely assume that this figure arrived at by the Illinois Commission, passed the scrutiny of par-

ties in interest and of the reviewing Courts. It is comparable to the amount allowed in this case.

The Commission wishes to reiterate that this estimate of going concern value is fixed in this case under our view that the Commission is bound by the evidence in the record and we do not intend to here announce a principle as to going concern value which will bind us in the consideration of other cases where the evidence may justify a different conclusion.

Values

We find the value of the property used and useful, as of June 30, 1925, to be $104,282,735.00.

Thirteenth—Book Value

The sum arrived at by the Commission is based exclusively upon the reproduction cost, less depreciation, of the entire plant, but it is proper that we check this valuation with other figures which have been submitted in the course of the hearing and in the argument of counsel.

Counsel for the company on page 174 et seq. of their brief submitted what is there termed "A Practical Solution," by resorting to the average book cost to the company of fixed capital, construction work in progress and working capital as of June 30, 1925. This matter is set [fol. 384] out somewhat at length in record of proceedings page 4256 et seq.

The figures in the argument are somewhat erroneous but have been corrected so as to stand as of June 30, 1925, as follows:

Fixed Capital	$98,712,029.85
Construction work in progress	2,223,717.51
Material & Supplies	1,390,336.32
Total	$102,326,083.68

If to this be added the working capital allowed in the sum of $3,500,000.00, a total of $105,826,083.68 is reached—$1,543,348.68 in excess of the reconstruction value.

This sum of $1,543,348.68 would be practically absorbed by eliminating that portion of the $3,500,000.00 working capital, corresponding to the book value of material and supplies.

It is true that counsel for the State vigorously assails the book cost as estimated by the company, in their brief, pages 15 to 20. On page 20:

"From the foregoing it is reasonably safe to state that a truer book value for this company as of June 30, 1925, would be under $90,000,000.00, a large part of which represented going concerns acquired by the company or new plant installed at Western Electric material prices * * *."

One of the grounds of their attack was the testimony of Mr. Taylor to the effect that before the acquisition by the present company, there had been a large inflation of book values in certain of the companies, particularly The Ohio State Telephone Company, now component parts of the Bell System. Another ground for attack (pages 28-30) was the fact that the Bell Telephone Company purchased much of its property from The Western Electric Company, an associated manufacturing company and that such purchases were made at a higher price than the same material could have been obtained from independent producers.

[fol. 385] As to the first objection urged by counsel for the State, the Commission finds that the testimony as to inflated book values is not very definite and that if such inflation did occur in some companies as early as 1901, it has been washed out during the course of the development of the Bell Telephone Company as now organized.

As to the second point, it appears that the contract between the Bell Company and The Western Electric Company has been under attack in numerous cases and has been held by Courts on many occasions as not having been a vehicle for the inflation of values. In Smith vs. The Illinois Bell Telephone case, this relation between the Bell Company and The Western Electric Company was commented upon.

Mr. Hagenah in his examination of the book value as presented by the company has given it his approval.

The Commission is therefore of the opinion that as of June 30th, 1925, $102,326,083.68 would fairly represent the original book cost of the property, to which it is proper to add an allowance for working capital, as above set out.

While there is no connection between the reproduction

cost and the book value, the Commission feels that the fact that the two, after adjustment for working capital, so nearly approach each other reinforces the valuation on the reproduction theory.

Conclusion

It is the opinion of the Commission, therefore, that the valuation of the property used and useful in rendering service, both local and long distance by The Ohio Bell Telephone Company in the State of Ohio, upon a reproduction cost new less depreciation basis, is $104,282,735.00, detailed according to accounts in "Exhibit A," which is attached hereto and made a part of this finding.

An analysis of "Exhibit A," shows that there is devoted exclusively to toll service, property having an approximate reproduction value of $15,960,696.00 and a present value of $13,871,879.00.

[fol. 386] This property is exclusively devoted to long distance service, whether the same be State or Interstate and bears its proportionate share of the undistributed construction costs, going concern value and working capital.

The total valuation of the local exchange property is approximately $90,410,856.00 as compared to the valuation of the whole plant of $104,282,735.00. The exchange property is the property devoted to local service and it alone affects the purely local subscriber.

A recent decision of the Supreme Court may require some modification of this figure and make it necessary to further classify this toll property into property used and useful in intrastate service as distinguished from interstate service.

In order that we may visualize the effect of the valuation upon the rate to be charged to the subscriber, we might point out that assuming, for example, the company is entitled to an income of 7% upon its property used and useful, each million dollars in the valuation would justify a net income of $70,000.00. It is estimated that the Bell Telephone stations in use in Ohio, number 717,832, so that each million dollars in valuation would effect each subscriber approximately to the extent of 10¢ per year. If we exclude toll income, the effect upon each station, for local service, would be still less. The value of the prop-

erty is so large and the number of subscribers so great that what may appear to be a large sum is comparatively small in its final effect upon the rate payer.

It is the opinion of one member of the Commission that a different method of appraisal should have been used in regard to the deduction of 3% for obsolescence and the allowance of an independent additional sum for going concern. The 3% deduction for obsolescence was based upon testimony as to the excessive cost of operation of this company's property. The proof of such cost is insufficient to justify an additional deduction from the present physical condition of the plant.

[fol. 387] The Supreme Court of Ohio in the Hardin-Wyandot case and the Portsmouth Gas case has approved the methods heretofore used by the Commission wherein an independent allowance was not made for going concern value. The Court held that if otherwise the valuation is shown to be reasonably just and fair and the appraisal made of the plant as a going concern, with a proper allowance of all overhead items entering into the construction of such plant, such valuation should be sustained.

A study of the book values of the company as of December 31, 1925, shows the original cost of the company's property to be $104,261,943.07 and the book value of the company's physical plant as of June 30, 1925, the date certain, to be $98,712,029.28. This amount plus the allowance the Commission is accustomed to make in telephone property appraisals of 5% for working capital including material and supply account, would bring the valuation of the company's property to $103,647,630.00 as of June 30, 1925.

However, in view of the difference not being great in the final sum arrived at, all members concur in the final valuation figure.

An order of the Commission fixing said sum as the value of the property of The Ohio Bell Telephone Company will accordingly issue.

The Public Utilities Commission of Ohio, Frank W. Geiger, Chairman. John W. Bricker, Wm. Klinger, Commissioners. (Seal.)

Dated at Columbus, Ohio, this tenth day of January, 1931.

A true copy: Ira E. Sprankle, Superintendent of Investigation.

[fol. 388]

EXHIBIT A

Summary of Valuations

As of June 30, 1925

Acct. No.	Description	Total Reproduction Value	Percent Condition	Present Values
207	Right-of-Way	$1,568,281.00	100.00	1,568,281.00
211	Land	3,256,854.00	100.00	3,256,854.00
212	Buildings	7,788,774.00	90.18	7,023,924.00
	Total Land & Buildings	11,045,628.00	Ave. 93.08	10,280,778.00
221	Central Office Telephone Equipment	17,199,740.00	85.75	14,748,777.00
222	Other Equipment of Central Offices	634,689.00	84.72	537,709.00
	Total Central Office Equipment	17,834,429.00	Ave. 85.71	15,286,486.00
231	Station Apparatus	5,759,956.00	85.68	4,935,086.00
232	Station Installations	2,034,423.00	80.00	1,627,538.00
233	Interior Block Wires	83,881.00	80.00	67,105.00
234	Private Branch Exchanges	3,384,995.00	85.75	2,902,633.00
235	Booths & Special Fittings	167,201.00	80.00	133,761.00
	Total Station Equipment	11,430,456.00	Ave. 84.56	9,666,123.00
241	Exchange Pole Lines	9,412,432.00	72.93	6,864,844.00
242	Exchange Aerial Cable	8,055,194.00	87.71	7,064,968.00
243	Exchange Aerial Wire	4,556,220.00	76.72	3,495,338.00
244	Exchange Underground Conduit	9,386,032.00	95.00	8,916,730.00
245	Exchange Underground Cable	9,810,730.00	91.85	9,011,082.00
246	Exchange Submarine Cable	19,730.00	95.00	18,744.00
	Total Exchange Lines	41,240,338.00	Ave. 85.77	35,371,706.00

[fol. 389]

Summary of Valuations

As of June 30, 1925

Acct. No.	Description	Total Reproduction Value	Percent Condition	Present Values
251	Toll Pole Lines	6,108,489.00	80.93	4,943,325.00
252	Toll Aerial Cable	536,254.00	91.50	490,692.00
253	Toll Aerial Wire	3,842,664.00	91.78	3,526,696.00
254	Toll Underground Conduit	30,493.00	95.00	28,968.00
255	Toll Underground Cable	421,257.00	91.64	386,032.00
256	Toll Submarine Cable	12,652.00	95.00	12,019.00
	Total Toll Lines	10,951,809.00	Ave. 85.72	9,387,732.00
261	Office Furniture & Fixtures	624,244.00	85.00	530,607.00
263	General Store Equipment	18,181.00	85.00	15,454.00
264	General Stable & Garage Equipment	652,331.00	75.00	489,248.00
265	General Tools & Implements	422,051.00	70.00	295,436.00
	Total General Equipment	1,716,807.00	Ave. 77.51	1,330,745.00

EXHIBIT A—Continued

Summary of Valuations

As of June 30, 1925

Acct. No.	Description	Total Reproduction Value	Percent Condition	Present Values
	Summary			
	Right-of-Way	1,568,281.00	100.00	1,568,281.00
	Land and Buildings	11,045,628.00	93.08	10,280,778.00
	Central Office Equipment	17,834,429.00	85.71	15,286,486.00
	Station Equipment	11,430,456.00	84.56	9,666,123.00
	Exchange Lines	41,240,338.00	85.77	35,371,706.00
	Toll Lines	10,951,809.00	85.72	9,387,732.00
	General Equipment	1,716,807.00	77.51	1,330,745.00
	Total Physical Property	95,787,748.00	Ave. 86.54	82,891,851.00
	Undistributed Const. Expenditures	16,523,387.00	Ave. 86.54	14,298,844.00
	Going Concern Value	3,592,040.00	100.00	3,592,040.00
	Total Fixed Capital	115,903,175.00	Ave. 86.95	100,782,735.00
	Working Capital including Supplies	3,500,000.00	100.00	3,500,000.00
	Total Property Used and Useful	119,403,175.00	Ave. 87.34	104,282,735.00

[fol. 390] EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on in pursuance of the investigation and inquiry by the Public Utilities Commission of Ohio upon its own motion to determine

(a) The fair value of the property, toll and exchange of The Ohio Bell Telephone Company;

(b) The just and reasonable rates, and

(c) The reasonable rules and regulations for service furnished by said Company to its patrons throughout the State of Ohio,

the testimony and exhibits offered and introduced in evidence upon such hearing and the argument of counsel and

The Commission, coming now to value the property of said respondent, The Ohio Bell Telephone Company, used and useful for the convenience of the public for the furnishing of its telephonic service (local exchange and toll) and after considering said evidence and exhibits offered at the hearings herein, and having completed a valuation of said property, and having this day made and filed in writing its findings of fact herein.

The Commission hereby further finds the sum of $104,282,735.00 to be the present value of the property of The Ohio Bell Telephone Company, used and useful for the convenience of the public in the furnishing of local exchange and toll telephonic service as of June 30, 1925, and that the values of the several classes and kinds of said property are as set forth in the following summary, to-wit:

[fol. 391]

Acc't. No.	Description	Reproduction Value	Depreciation Total %	Depreciation Total	Present Value
207	Right of Way	1,568,281.00	.....	.....	1,568,281.00
211	Land	3,256,854.00	.....	.....	3,256,854.00
212	Buildings	7,788,774.00	9.82	764,850.00	7,023,924.00
	Total Land and Buildings	11,045,628.00	6.92	764,850.00	10,280,778.00
221	Central Office Telephone Equipment	17,199,740.00	14.25	2,450,963.00	14,748,777.00
222	Other Equipment of Central Offices	634,689.00	15.28	96,980.00	537,709.00
	Total Central Office Equipment	17,834,429.00	14.29	2,547,943.00	15,286,486.00
231	Station Apparatus	5,759,956.00	14.32	824,870.00	4,935,086.00
232	Station Installations	2,034,423.00	20.00	406,885.00	1,627,538.00
233	Interior Block Wires	83,881.00	20.00	16,776.00	67,105.00
234	Private Branch Exchanges	3,384,995.00	14.25	482,362.00	2,902,633.00
235	Booths and Special Fittings	167,201.00	20.00	33,440.00	133,761.00
	Total Station Equipment	11,430,456.00	15.44	1,764,333.00	9,666,123.00
241	Exchange Pole Lines	9,412,432.00	27.07	2,547,588.00	6,864,844.00
242	Exchange Aerial Cable	8,055,194.00	12.29	990,226.00	7,064,968.00
243	Exchange Aerial Wire	4,556,220.00	23.28	1,060,882.00	3,495,338.00
244	Exchange Underground Conduit	9,386,032.00	5.00	469,302.00	8,916,730.00
245	Exchange Underground Cable	9,810,730.00	8.15	799,648.00	9,011,082.00
246	Exchange Submarine Cable	19,730.00	5.00	986.00	18,744.00
	Total Exchange Lines	41,240,338.00	14.23	5,868,632.00	35,371,706.00
251	Toll Pole Lines	6,108,489.00	19.07	1,165,164.00	4,943,325.00
252	Toll Aerial Cable	536,254.00	8.50	45,562.00	490,692.00
253	Toll Aerial Wire	3,842,664.00	8.22	315,968.00	3,526,696.00
254	Toll Underground Conduit	30,493.00	5.00	1,525.00	28,968.00

255	Toll Underground Cable	421,257.00	8.36	35,225.00	386,032.00
256	Toll Submarine Cable	12,652.00	5.00	633.00	12,[illegible] 00
	Total Toll Lines	10,951,809.00	14.28	1,564,077.00	9,387,732.00
261	Office Furniture and Fixtures	624,244.00	15.00	93,637.00	530,607.00
263	General Store Equipment	18,181.00	15.00	2,727.00	15,454.00
264	General Stable and Garage Equipment	652,331.00	25.00	163,083.00	489,248.00
265	General Tools and Implements	422,051.00	30.00	126,615.00	295,436.00
	Total General Equipment	1,716,807.00	22.49	386,062.00	1,330,745.00
	Total Physical Property	95,787,748.00	13.46	12,895,897.00	82,891,851.00
	Undistributed Construction Costs	16,523,387.00	13.46	2,224,543.00	14,298,844.00
	Going Concern Value	3,592,040.00	.....	.....	3,592,040.00
	Total Fixed Capital	115,903,175.00	13.05	15,120,440.00	100,782,735.00
	Working Capital Including Supplies	3,500,000.00	.....	.....	3,500,000.00
	Total Property Used and Useful	119,403,175.00	12.66	15,120,440.00	104,282,735.00

[fol. 392] It is therefore,

Ordered, That notice of such valuation so placed upon said property be transmitted by registered letter to said The Ohio Bell Telephone Company, to the Attorney General of the State of Ohio, and to the Mayors of

Akron,
Alliance,
Alton,
Atwater,
Barberton,
Barnsville,
Bedford,
Bellbrook,
Belpre,
Berea,
Bloomingburg,
Bloomingville,
Bellaire,
Bethesda,
Bowersville,
Brecksville,
Buchtel,
Bridgeport,
Canal Fulton,
Canal Winchester,
Canfield,
Castalia,
Centerville,
Canton,
Chagrin Falls,
Christiansburg,
Clifton,
Columbiana,
Cleveland,
Cuyahoga Falls,
Columbus,
Conesville,
Coshocton,
Dalton,
Dayton,
Donnelsville,
Dresden,
Dublin,
East Liverpool,
Enon,
East Palestine,
Findlay,
Fletcher,
Fostoria,
Franklin,
Gahanna,
Gallipolis,
Galloway,
Gates Mills,
Girard,
Grove City,
Groveport,
Gnadenhutten,
Harrisburg,
Hartville,
Hilliards,
Holland,
Hubbard,
Independence,
Jamestown,
Jeffersonville,
Kent,
Leetonia,
Lisbon,
Louisville,
Lancaster,
Lena,
Linden Heights,
Lockborne,
London,
Magnolia,
Mantua,
Marlboro,
Marietta,
Martins Ferry,
Massillon,
Maumee,
Miamisburg,
Middletown,
Milledgeville,
Mingo Junction,
Murray City,
Navarre,
Nelsonville,
New Albany,
New Carlisle,
New Castle,
Newcomerstown,
New Holland,
New Waterford,
North Hampton,
North Royalton,
North Canton,
North Jackson,
Niles,
Osborne,
Painesville,
Perrysburg,
Pickerington,
Piqua,
Pitchin,
Plainfield,
Port Washington,
Ravenna,
Reynoldsburg,

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Ripley,	Steubenville,	Willsville,
Rogers,	Strongsville,	West Carrollton,
Roseville,	Thornville,	Westerville,
Salem,	Toledo,	West Lafayette,
Salineville,	Toronto,	West Lake,
Sandusky,	Tremont City,	Whitehouse,
Sebring,	Trimble,	Wickliffe,
Sedalia,	Tuscarawas,	Willoughby,
Sharon,	Uhrichsville,	Winchester,
Sharpsville,	Uniontown,	Worthington,
South Charleston,	Upper Sandusky,	Woodsfield,
South Euclid,	Vandalia,	Xenia,
South Solon,	Warrensville,	Yellow Springs,
Springfield,	Washington C. H.,	Youngstown,
Spring Valley,	Waynesburg,	Zanesville,

all as provided for under Section 499-12 of the General Code of Ohio. It is further

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further

Ordered, That the Commission reserve the right in the event it shall determine the aforesaid inventory to be incomplete or incorrect, or that said valuation is incorrect, to make such changes as necessary before such tentative valuation shall become final.

The Public Utilities Commission of Ohio, Frank W. Geiger, Chairman. John W. Bricker, Wm. Klinger, Commissioners.

Dated at Columbus, Ohio, this tenth day of January, 1931.

A true copy. Ira E. Sprankle, Superintendent of Investigation. (Seal.)

[fol. 394] EXHIBIT C.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by the Public Utilities Commission of Ohio, Upon its Own Motion, for the Determination (a) of the Fair Value of the Prop-

erty of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Protest and Notice of Protest of Valuation on Behalf of The Ohio Bell Telephone Company

To the Honorable The Public Utilities Commission of Ohio:

The undersigned, The Ohio Bell Telephone Company, hereby files and submits this its protest and notice of protest against the valuation and values as of June 30, 1925, both reproduction and present, of the property of The Ohio Bell Telephone Company under consideration in this proceeding, as such valuation and values were ascertained and found by your Honorable Commission in its valuation finding and order in this cause dated the 10th day of January, 1931,— for the reasons and upon the grounds following, towit:

1. The said reproduction valuation and values so found and ascertained in said finding and order are inadequate, incorrect, incomplete, inaccurate and too low, both in the aggregate and in the following respects, towit:

[fol. 395] 2. The said reproduction valuation and values so found and ascertained in said finding and order, are inadequate, incorrect, incomplete, inaccurate and too low with respect to each and all of the following accounts, items and parts thereof and allowances therefor:

Account No.	
207	Right of Way.
211	Land.
222	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.

254 Toll Underground Conduit.
255 Toll Underground Cable.
Undistributed Construction Costs and Expenditures.
Going Concern Value.
Working Capital, Including Supplies.
Construction Work in Progress.

3. The said present valuation and values, that is to say, the reproduction valuation and values in present condition, so found and ascertained in said finding and order, are inadequate, incorrect, incomplete, inaccurate and too low with respect to each and all of the following accounts, items and parts thereof and allowances therefor:

Account No.
207 Right of Way.
211 Land.
212 Buildings.
221 Central Office Telephone Equipment.
222 Other Equipment of Central Offices.
[fol. 396]
231 Station Apparatus.
232 Station Installations.
233 Interior Block Wires.
234 Private Branch Exchanges.
235 Booths and Special Fittings.
241 Exchange Pole Lines.
242 Exchange Aerial Cable.
243 Exchange Aerial Wire.
244 Exchange Underground Conduit.
245 Exchange Underground Cable.
246 Exchange Submarine Cable.
251 Toll Pole Lines.
252 Toll Aerial Cable.
253 Toll Aerial Wire.
254 Toll Underground Conduit.
255 Toll Underground Cable.
256 Toll Submarine Cable.
261 Office Furniture and Fixtures.
264 General Stable and Garage Equipment.
265 General Tools and Implements.
Undistributed Construction Costs and Expenditures.

Going Concern Value.
Working Capital Including Supplies.
Construction Work in Progress.

4. Various items, kinds and values of property which should have been included in said valuation and values, reproduction and present, have been omitted therefrom, including the items of construction work in progress and including, also, the following items of land owned by said company and useful for the service and convenience of the public as of June 30, 1925, towit:

At Cleveland:
Parcel No. 17.
Parcel No. 19.
Parcel No. 21.
At Columbus:
Parcel No. 17.
Parcel No. 18.
[fol. 397]
At Coshocton:
Parcel No. 1.
At Dayton:
Parcel No. 3.
At Springfield:
Parcel No. 1.
At Toledo:
Parcel No. 8.
Parcel No. 9.

5. The reproduction valuation and values of said property as of June 30, 1925, both in the aggregate and with respect to the separate accounts and items hereinabove in paragraph 2 set forth, are substantially in excess of and greater than the said reproduction valuation and values so found and ascertained by your Honorable Commission as aforesaid.

6. The present valuation and values, that is to say, the reproduction valuation and values in present condition, of said property as of June 30, 1925, both in the aggregate and with respect to the separate accounts and items in paragraph 3 hereinabove set forth, are substantially in excess of and greater than the said present valuation and values so found and ascertained by your Honorable Commission as aforesaid:

7. The amount or allowance fixed and determined in said finding and order for the going concern value of said property, including the cost of establishing business, is inadequate, incorrect, insufficient and too low for the further reason that the same is based upon only the direct labor and material costs of said property instead of upon the total physical property costs thereof inclusive of the undistributed construction expenditures or costs, said undistributed construction expenditures or costs being a part of said physical property costs and having been treated and considered as such in the computation of the depreciation existing in said property.

[fol. 398] 8. In finding and ascertaining said valuation and values, reproduction and present, your Honorable Commission failed and refused, with respect to the items and accounts hereinabove in paragraph 2 set forth, to give due effect or weight to the values and costs of said property, and of like property, current at the time and effective as of the date of said tentative valuation and as of the time of the inquiry upon which said tentative valuation was based.

9. The several percentages adopted and applied under the heading of "Percent Condition" by your Honorable Commission in said finding and order in computing and arriving at the said present values of said property are too low and do not reflect the true physical condition and values thereof as of the said 30th day of June, 1925.

10. In each and all of the foregoing respects the said finding and order of your Honorable Commission are and were unjust, unreasonable and unlawful and the valuation and values fixed therein, reproduction and present, were and are inadequate, insufficient and too low and will, if the same be made or become final, lead to and result in the confiscation of said company's property and will constitute a taking of the same for public use without just compensation and will deprive said company of its property without due course or process of law, in violation of the constitutions of the State of Ohio and of the United States, respectively.

The Ohio Bell Telephone Company, by Randolph Eide, Its President; Karl E. Burr and W. H. Thompson, Its Attorneys.

[fol. 399] EXHIBIT D

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In re Investigation and inquiry of The Public Utilities Commission of Ohio, upon its own motion, for the determination (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and exchange (b) of the just and reasonable rates and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio.

Opinion and Finding

January 10, 1931 Commission found tentative valuation of $104,282,736—Protests were filed by the company and by the State—One asserted Commission's valuation too low, the other too high—Real estate purchased by company but not presently used and useful no part of rate base—Former finding as to labor cost adhered to—Progressive obsolescence to be considered—Property on date certain 87% condition—Interstate property and income distinguished from intrastate property and income—Not necessary to separate intrastate toll property and revenue from exchange property and revenue—Prices of Western Electric to Bell Company fair and reasonable, both prior to date certain and subsequent thereto, except for increase of November 1, 1930—Going Concern Value reconsidered—Direct and undistributed overhead costs allowed found to be sufficient to cover separate allowance of going concern value—$3,592,040 allowed in tentative valuation for going concern value now disallowed as a separate item—Distributed or direct overheads allowed as follows: Plant Supervision and Tool Expense $3,354,980; Incidental Expense $655,360; Supply Expense $2,188,885; Contingencies $145,553; Building Overheads $1,280,861; Western Electric Engineering Service and Inspection $1,100,378; Total of direct overheads $8,726,017, present value $7,496,264—Undistributed Construction Expenditures allowed as follows: Omissions 1%; Interest During Construction 6%; Engineering 5%; Taxes 1%; General Expenses 2%, Total 15%—Some of these allowances applicable to all the prop-

[fol. 400] erty and some applicable to only a portion thereof—Amount allowed Omissions $697,120; Interest

During Construction $4,953,996; Engineering $2,779,056; Taxes During Construction $825,666; General Expenses $1,651,332; Total as of Date Certain $10,907,170; Total Overheads $18,403,434, 24.5% of total value of fixed capital exclusive of overheads—Right of Way fixed on book value at $1,243,034—Working Capital and Materials and Supplies $2,948,502—Statutory rate cannot be altered until Commission fixes different rate—Reasonable rate as of date certain fixed in consideration of predictable or experienced changes that it may produce a proper return for a reasonable time—Rate based upon value of property and net income at date certain, but future value fixed with consideration to price trends—Price trends considered and ascertained—Company-wide case instituted in October, 1924, for determination of valuation, expenses and rates of the company for its services as a whole—Commission's inquiry since proceeded on Company-wide basis without separate testimony in Pence Law Cases—Right of Commission to fix rate for separate exchanges by considering value of the property enmasse questioned—Company divided exchanges into groups and fixed rates—Company rates as fixed for each exchange represent balance consistent rate for entire territory in harmony with value of property used in each exchange—Company and representatives of State and municipalities acquiesced in Company-wide treatment—Company estopped by its action during trial of the company-wide case to now test rate for each exchange by separate determination of value and net income—Commission justified in fixing rate in each municipality upon relative valuations recognized by Company when it grouped its exchanges—Valuation as of date certain found to be $93,707,488 being a reduction of $10,575,247 from the former tentative valuation—Rates for succeeding years fixed on consideration of conditions and betterments and price trends—valuation of property overemphasized—Years consumed on this problem with slight attention to revenues and expenses—This is common of most cases—At a return of 7% every million dollars of value effects rate payers only to the extent of $70,000 annually, less than ten cents for each subscriber—Based on 7% rate of return, each dollar of revenue and expense has fourteen times as much weight on the ultimate result as any dollar of valuation—Company required to make

reservations for surplus, depreciation and contingencies and other proper matters—Commission required to ascer- [fol. 401] tain adequate charges for depreciation—Utility entitled to earn fair return upon investment and to maintain property in state of efficiency corresponding to the progress of the art or industry—As depreciation reserve is earned, it should replace deteriorated, obsolete and useless items—Policy of company important factor in determining proper depreciation allowances—Company's property well maintained—In addition to expenditures for maintenance and charges to reserve for depreciation, company at date certain had accumulated reserve balance of $12,560,502, $228,739 being for amortization of intangible property—As of December 31, 1932, reserve for accrued depreciation and amortization $20,569,893, approximately $306,000 of which is reserve for amortization of intangible capital—Balance in reserve shows accumulated amount to replace depreciated property in future which customers have paid in advance of writing the property out of plant account—Definite relation between past accumulations from reserves and proper allowances for future—Up to December 31, 1931, book value of gross additions were $181,971,638 and gross reductions $88,419,086, disclosing that entire money value of fixed capital at September, 1921, date of merger of telephone properties in Ohio, became fully retired during 1931—The gross deductions at end of 1930 $74,674,366, within $600,000 of entire money value of fixed capital September 21, 1921—Composite rate of 3.74% of depreciable property expended annually amply sufficient considering large sums expended before and after date certain for maintenance and repair —Plant substantially reconstructed—Composite rate of 4% of depreciable property fair annual allowance for depreciation expense computed on present value of depreciable property as of the date certain and for subsequent years plus net additions—$3,373,236 fair amount to be allowed for depreciation expense for 1925 allocated between interstate and intrastate—Important questions raised by license contract with the A. T. & T. Co.—Amount of license fee 1923 4½% of gross earnings; January 1926 4%; January 1928 2%; and January 1929 1½%—Cannot agree with finding of Statutory Court in Chicago Case—Depreciation of instruments fixed at 3% instead of 6%

as allowed by the Statutory Court—License agreement provides for services by the A. T. & T. Co. to its associate companies—Broad field occupied by A. T. & T. Co., owning many subsidiary companies and having wide field of operation—All license contract costs analyzed in detail and allowed in part and disallowed in part as appears on Appendix "H"—Other expenses including office, instrument, [fol. 402] patent infringement, taxes and costs of financial transaction allowed in part and disallowed in part—Company entitled to fair return on value of property used—Company enjoys monoply in territory, business substantial, properties favorably located, management high grade, financial position favorable—Fair rate of return on value of intrastate property 7% for 1925 to 1929 inclusive; 6½% for each of the years 1930 and 1931 and 5½% for each of the years 1932 and 1933—Based on Commission's finding as to value, the Company received rates of return as follows: 1925, 8.95%; 1926, 9.01%; 1927, 8.79%; 1928, 8.57%; 1929, 8.09%; 1930, 7.52%; 1931, 7.64%; 1932, 6.18%; 1933, 5.51%—Company entitled to earn as its net income from intrastate business for 1925, $6,559,524; 1926, $7,123,734; 1927, $7,772,557; 1928, $8,569,241; 1929, $9,433,590; 1930, $9,469,398; 1931, $9,442,658; 1932, $7,349,411; 1933, $6,959,232—Company collected on intrastate business an excess net income as follows: 1925, $1,822,647; 1926, $2,041,483; 1927, $1,986,610; 1928 $1,925,301; 1929, $1,463,347; 1930 $1,481,689; 1931, $1,659,760; 1932, $908,335; a total of $13,289,172—No excess of net income for 1933—Finding that the rates for services rendered on the date certain are unjust and unreasonable and that the company be required to submit new schedules setting forth rates as of date certain, giving first consideration to proper reductions of increased rates, which shall produce net income not in excess of that found to be fair and reasonable—Order that of the excess net income there by repayments by company in the manner provided by law to consumers entitled thereto.

By the Commission (Geiger and Schaber concurring).

On January 10, 1931, this Comission found the tentative valuation of the property of The Ohio Bell Telephone Company used and useful in furnishing service within the various municipalities of the State of Ohio together with the

value of the property used for toll service, both interstate and intrastate, to be as of June 30, 1925—$104,282,735. (See Annual Report of the Public Utilities Commission of Ohio, 1931, pages 61 et seq.)

The Commission in announcing its opinion at that time set out in such detail the development of the several rate cases affecting various exchanges into the present company-wide case through its order of October 14, 1924, that the same need not be here repeated.

[fol. 403] Protests Filed

On February 7, 1931 and February 9, 1931, the Company, the Attorney General and special counsel and the law directors and city solicitors of many of the cities in which the Company operates, associated with the Attorney General, filed their respective protests to the valuation so fixed by the Commission. The protests cover many points in such detail as to preclude specific enumeration, but they may be briefly summarized as follows:

Protest by the Company

The Company protested the valuations, both reproductive and present, in that the same are inadequate, incomplete, inaccurate and too low, both in the aggregate and in the respects detailed in said protest. The Company claims that both in the aggregate and with respect to the separate accounts the true value of the property is substantially in excess of the value found by the Commission and asserts that in all respects set out in its protest the finding of the Commission is unlawful and that if the same became final, the valuation would result in confiscation of the Company's property and would deprive it of such property without due process of law.

Protest by the State and Municipalities

The protest filed on behalf of the telephone users of Ohio and of the municipalities and communities thereby affected is directed against the tentative valuation for the reasons specifically set out, in which it is claimed that the Commission's valuation is too high with respect to the accounts enumerated in said protest which cover substantially the entire property of the Company. The alleged excessive

valuations of each class of property are specifically enumerated.

In short, each side protested the tentative valuation fixed by the Commission for the reason that the Commission had not adopted the valuations claimed by each, one side asserting that the Commission's valuation is too low and the other too high.

[fol. 404] Due to the fact the late Attornies General of the State, who by the statute were required to designate the legal advisor of the Commission, have throughout this proceeding acted on behalf of the telephone users of the State in an adversary capacity, the Commission has been compelled to proceed without the benefit of counsel.

The Commission does not feel called upon to go into a detailed re-examination of all the evidence which led it to make its tentative valuation, but will confine itself to matters particularly stressed in the protests and supporting briefs, or which are drawn in question by decisions of the Supreme Court of the United States and other courts announced subsequent to the Commission's tentative finding, or by the application of principles announced in recent decisions of high courts on pertinent matters.

Matters Stressed in Brief

While counsel for the Company at the time of the filing of its protest to the tentative valuation filed no formal brief, they have since prepared and submitted as of October 17, 1933, a very exhaustive brief covering over three hundred printed pages in answer to the brief of counsel for the state and associates filed August 18, 1933.

These briefs impose upon the Commission the duty of considering all matters thus called to its attention, whether they relate to that portion of this case which preceded the Commission's finding of value as heretofore announced or relate to matters presented at a subsequent date.

While we will take up the several matters presented by each counsel for orderly disposition, it may not be possible to discuss them in the order followed by counsel nor to specifically refer to each point stressed in the respective briefs.

[fol. 405] Specific Criticisms by Company's Counsel

It is asserted by counsel for the Company that, reduced to lowest terms, the State's brief establishes the case of the

Company, not only for its present rate, but for substantially higher rates, for the reason that it is only by urging in the State's favor all the points decided by the Commission against the State and all the points decided by the Federal Statutory Court against the city of Chicago, Ill. in, the case of the Illinois Bell Telephone Company v. Gilbert, et al., Fed. Supp., 595, that the State is able to arrive at rates of return therein set out varying from the high of 8.37% in 1926 to the low of 6.33% in 1931. Counsel for the Company point out that as contrasted with these rates of return and adopting the Commission's tentative value of $104,000,000 and conceding all the adverse holdings of either the Commission or the Federal Court, the rate of return upon the intrastate property would vary from the low of 4.28% in 1932 to the high of 6.24% in 1926.

It is urged that the Company's return has fallen short of a fair return by amounts varying from the high in 1930 of $3,254,877 to the low of $1,119,050 in 1928.

Real Estate

Counsel for the Company criticise the Commission in its refusal to allow as part of the rate base the value of the real estate acquired by the Company but not presently used, and cite many cases in which it has been held that such property should go into the rate base on the theory that there is an obligation on the Company to acquire selected pieces of real estate advantageously located at favorable prices in anticipation of future use, rather than to await the time when such real estate is actually needed and must then be acquired at a greater price.

The Commission based its refusal to allow the value of such real estate to go into the rate base upon the theory that the statutes of the State are explicit in that only used [fol. 406] and useful property shall be included in the rate base and that lands purchased for future use, if not actually used on the date certain, must be excluded, but that their value may be considered to enhance the rate base as of the date when they are actually put in use. This has been done, as shown in Appendix "C."

We think this is in harmony with the holding of the Supreme Court as evidenced in the Logan Gas Case, 121 O. S., 507, and subsequent decisions of the Court and until there

is a reversal of this, the Commission is bound by this declared position of our Supreme Court.

Labor Costs

Company's counsel discuss at length (Brief, Page 23 et seq.) the assertion that the Commission should add to the value of the property an amount of not less than $12,000,000, which counsel claim was wrongfully withheld from the valuation by following the erroneous theory as to labor costs advanced by the witness Hagenah, it being claimed that had the Commission followed the actual experience of the Company as to costs of labor as disclosed by the Company's books when engaged in large enterprises, rather than the theory by Hagenah that labor prices should be computed as in a "wholesale construction," that there would have been added to the tentative value at least $12,000,000.

We have again given this matter consideration and do not feel justified in disturbing the former finding of the Commission upon this point.

Percent Condition

A serious complaint is made by counsel for the Company (Brief, Page 33 et seq.) as to the finding by the Commission that the property on the date certain was in 87% condition rather than in 90% as claimed by the Company.

The 3% difference between the condition as found and the condition as claimed, translated into dollars, would add [fol. 407] nearly $3,000,000 to the present value of the property, and is consequently of major importance.

Three witnesses for the Company, well qualified and familiar with the property, testified; one to a weighted average of 90.09%, another to 89.5% and the third to 90.01%, whereas Hagenah, the Engineer for the State, testified to 87% condition.

The challenge of counsel has called upon the Commission to again read the testimony of these engineers, and it may be said that counsel have set out in their brief a fair synopsis of the evidence of each. Counsel challenge the foundation for the statement of Hagenah that there is depreciation due to obsolescence and lack of utility.

The Commission, upon the original hearing, was impressed with the testimony of Mr. Hagenah and followed

his estimate without an extensive discussion. The Commission also considered other evidence of condition, presented by the record.

This Commission has had occasion to discuss at length the question of obsolescence in Case No. 5672 in re Cambridge Home Telephone Company, Annual Report P. U. C. O. 1930, pages 117-128. It is there pointed out that Section 499-9, G. C., paragraph E, provides that the Commission shall find depreciation, if any, for obsolescence. The Commissioner there stated:

"The advance of an art is constantly making effective the element of obsolescence, and such element does not assert itself at a given instant but develops gradually in proportion to the advance of the art."

In order that we may visualize this element of depreciation to which, under the statute, we must give consideration, we should consider that the property of the Company scattered throughout the various cities and villages of Ohio was undergoing a pronounced change, in that in many cities it was the result of the combination of two companies with duplicated property. It is true that it is claimed that the combination had been completed and the property had for some time been in operation as a single unit, but it also appears from the evidence that there was a continual change [fol. 408] going on which required the elimination of many kinds of property which still had useful life, due to the progress of the art and due also to the ever present pressure of municipalities to rid their streets of overhead wires and poles. Much money has been expended by the Company in changing from aerial to underground construction.

These matters in our judgment, point to the fact that there was a solid basis for the former judgment of the Commission, that the element of progressive obsolescence was constantly at work to lessen the value of all depreciable property beyond the one element of observed physical depreciation due to wear and tear or use and exposure as denominated by Mr. Sloan. We, therefore, feel that we must adhere to the former judgment of the Commission. The percent condition of each class of property is set out in detail in Appendix "A."

For an extended discussion of a similar subject see, In

re Chesapeake and Potomac Telephone Company v. Public Service Commission of Maryland, November 28, 1933.

Re-Examination of Valuation of Certain Items

There are certain items which call for re-examination in view of a more detailed study of the principles laid down in Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255; Illinois Bell Telephone Company v. Gilbert et al., 3 Fed. Suppl. 595, and Los Angeles Gas & Electric Corp. v. Railroad Commission, 289 U. S., 287, 77 Law Ed., 1180.

Toll Service—Interstate and Intrastate

"A recent decision of the Supreme Court (The Illinois Bell Telephone case) may require some modification of this figure and make it necessary to further classify this toll property into property used and useful in intrastate service as distinguished from interstate service."

The Supreme Court in the Chicago case stated:

"The proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction, and this [fol. 409] cannot be accomplished unless there are findings of fact underlying the conclusions reached with respect to the exercise of each authority."

This matter is discussed at large by counsel for the Company, Brief 302 to 314, inclusive, and by counsel for the State, Brief, page 70.

A State Commission in fixing intrastate telephone rates of a company which also furnishes interstate service must separate the intrastate and the interstate property, revenues and expenses and make specific findings as to the value of the property devoted to intrastate service. Chief Justice Hughes gives a very clear analysis of those principles which compel the separation of the property devoted to the two classes of toll service and states:

"While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required; only reasonable measures being essential, it is quite another matter to ignore altogether the actual uses to which the property is put."

The Commission in its order of October 14, 1924, by which the company-wide case was initiated, ordered the Company to file its inventory.

"of all its property located in the State of Ohio used and useful and to be used and useful in furnishing telephone service therein *both toll and exchange.*"

The Commission did not at that time appreciate the importance of distinguishing between the property used for interstate toll service and that used exclusively for intrastate service. However, there is sufficient evidence, as disclosed by the record made prior to our former decision, supplemented by the additional evidence submitted by the Company since, to enable us to make a reasonable separation between the property devoted exclusively to interstate service and that devoted to intrastate service, both toll and exchange.

Following the decision of the Supreme Court in the Chicago case, we have made a study of the property devoted to, and the income arising from, interstate service as distinguished from intrastate service.

[fol. 410] Over a considerable period, a large force was employed by the company in typical exchanges to time the toll and exchange lines as the same were used for interstate and intrastate service and to make an extended analysis of toll tickets. We have no reason to doubt the accuracy of this division between interstate and intrastate property and income, and we adopt the Company's conclusion, as shown by its Exhibits. These allocations, expressed in terms of percentages, are shown on Appendix "L."

Intrastate Toll and Exchange Property and Revenues

No evidence has been adduced by which we can allocate the intrastate property of the Company as between exchange service and toll service.

The Supreme Court pointed out that the Company in separating its interstate and intrastate business attributed the property used at the subscriber's station and from that station to the toll switchboard or to the toll trunk lines entirely to intrastate service, and held that this was erroneous for the reason that the subscriber's station and other facilities of the Company used in connecting with the long

distance toll board are employed in the interstate transmission and reception of messages.

By a parity of reasoning, it is apparent that the subscriber's station and other facilities of the Company, which are used in connecting with long distance toll board for an intrastate message are employed in toll service as distinguished from exchange service, even though such toll service is complete within the limits of the State.

To segregate intrastate toll property and revenue from exchange property and revenue would be almost impossible. Fortunately, the Company, the State and the several solicitors are in agreement that there need be no such separation.

[fol. 411] Western Electric Prices

The Supreme Court in the Chicago case held that:

"Findings should be made as to the net earnings of a supply company from the manufacture and sale of equipment to an affiliated operating telephone company, in order to determine the fairness of the prices paid for equipment in a case involving the adequacy of telephone rates."

The Commission found in its tentative valuation that the Western Electric Company had not overcharged the Ohio Bell Telephone Company for equipment sold by it to that company. In view of the Supreme Court's holding in the Chicago case, we feel that we may not finally determine this point without further examination of the evidence adduced since the announcement of our tentative valuation.

New Evidence

During the year 1932 the Chicago case was being heard before the Statutory Court under the mandate of the Supreme Court. Accountants engaged in the Chicago case furnished evidence in the present case on matters concerning which testimony had been given and the Illinois Commission made available the services of its engineers. Counsel in this case entered into a stipulation covering the testimony of the Chicago case in so far as it related to four issues, namely: Western Electric profits; A. T. & T. License contract service cost; separation of interstate and intrastate plant, revenues and expenses and the rate of return.

Finding of the Statutory Court on Western Electric Prices

The Statutory Court in compliance with the direction of the Supreme Court made definite findings of fact touching the relations between the Bell Company and the Western Electric Company, as appears specifically in Findings 14 to 20, inclusive. The Court found that the prices of goods sold by the Western Electric to the Bell Company were fair and reasonable and no higher than those charged other purchasers and that the earnings of the Western Electric were not excessive.

[fol. 412] In Finding 19 the percent of earnings and profits of the Western Electric Company on sales to its Bell customers for the years 1916 to 1930 inclusive are set out. Finding 20 is to the effect that the sales of the Western Electric have been representative of the sales of that company to all Bell customers and that the earnings made by the Western Electric in the Chicago area have been fair and reasonable except that for the period after November 1, 1930, there should be a reduction of 10% from prices charged by the Western Electric.

The State has presented its views of the Western Electric operations in great detail in counsel's brief, pages 11 to 40 inclusive. It is urged by the State that 7% would constitute a fair return upon the value of the property of the Western Electric used for Bell service and that any profit above that amount is excessive and should be eliminated from the valuation of the Bell Company.

The summary of the State's claim is set out graphically in Appendix "B" of the State's brief pertaining to the valuation of June 30, 1925, the date certain, and Appendix "E" pertaining to subsequent valuation. These percentages are converted into dollars in Appendix "B", and show the State's claim that the reproduction value of the property by the Commission as of June 30, 1925, was excessive in the sum of $2,029,441.00 and that for the last six months of 1925 Western Electric profits were excessive in the sum of $188,000; and for 1926, $303,000; 1927, $535,000; 1928, $425,000; 1929, $341,000. For the year 1930 there was a loss to the Company of $47,538 (Appendix "E", Line 16).

Day Certain

We are required to fix the value of the property as of "a day certain" to-wit: June 30, 1925. The Statutory Court

estimated the return to the Western Electric from its Bell business for each of the years from 1916 to 1932. During that period the highest estimate of return was for the year 1921 computed by the Court at 10.7%.

[fol. 413] All the estimates of return by the Court in the Chicago case and by the State in this case are based upon book value without an actual appraisement of the property of the Western Electric. The engineers who valued the property of the Bell Company in the instant case used values of items furnished by the Western Electric based upon its price lists. For all the years prior to 1925, as found by the Court, the earnings of the Western Electric were less than 7%, except for the single year 1921. For the five years from 1925 to 1930 inclusive, the Court finds that the profits were in excess of 10%, being as high as 15.8% in 1928. In 1930 and 1931 they are found to be slightly over 7%, while 1932 shows a loss of 3.3%.

The figures set out in the State's Brief, Page 30, do not predate the year 1924 for which year the percent of return is asserted to be 10.3% with a substantial increase for the years thereafter until 1930, reaching the high point of 20.3% in 1928.

We have only one year of the State's estimate of the earnings prior to 1925 and we do not feel that that is a safe basis for discarding the finding made by the Court that there was no excess profit enjoyed by the Western Electric. It is proper that we call attention to the fact that the percents indicated by the State, as disclosed by the table in the brief, were computed "after correcting for all the foregoing adjustments." While we may concede that the State is right in some of the adjustments asserted, we are not in harmony with many of them.

Proper Profit of the Western Electric

In considering a proper profit for the Western Electric beyond which there would be an undue drain upon the resources of the Bell Company, it must not be lost sight of that while the Western Electric is the manufacturing department of the Bell Company, yet it is not, in fact, a public utility whose profits can be made secure by an order of the Commission. It is a manufacturing company whose income may dwindle in lean years below that which could

be considered fair for a controlled utility and it may even encounter losses.

[fol. 414] The Western Electric, while closely associated with the Bell Company and having a fairly constant market in supplying the requirements of that company, yet occupies the position of a hazardous undertaking, and its profits may fall without the supporting order of a regulatory body. If its profits may so fall, they likewise should be permitted to rise within proper limits without the regulating restraint of the Commission.

It might be said that there is no attempt to control the prices charged by the Western Electric to the Bell Company, but that the Bell Company should be penalized for paying these prices, inasmuch as the profits of both companies flow into the same treasury through the common holding company. In a measure this is correct, but there has been no showing that the prices charged by the Western Electric were "exorbitant."

The Supreme Court in the Chicago case in syllabus 7 and in its discussion of that head note, does not find nor intimate that the Western Electric should be confined to a profit only equal to that allowed to the utility. Chief Justice Hughes in speaking of the fairness of the prices uses the phrase that "the City had failed to support its contention that these prices were exorbitant."

In the later case of Western Distributing Company v. Public Service Commission of Kansas, 285, U. S. 199, 76 L. Ed., 655, the Court goes no further than to hold that where the total capital of several companies is embarked in one enterprise, the reasonableness of the inter-company charges may be the subject of inquiry and scrutiny, and that the state authority is entitled to a showing of the fairness and reasonableness of the price for gas paid by the distributing company to its associate producing company.

The rate fixing body has the right and duty to closely scrutinize inter-company charges, to see that no unjust burden is placed upon the utility whose rate is under investigation, but this does not mean that the profit of the non-utility company is to be limited by the same rules that govern the rates to be charged by the associate utility. The Supreme Court has suggested a broader rule in Wabash Valley Electric Co. v. Young, 287 U. S., 488, at 497.

[fol. 415] The finding of the Statutory Court in the Chicago case on this important matter will be reviewed by the U. S. Supreme Court at an early period, the case having been set for hearing before the Supreme Court for January 15, 1934. Should the Statutory Court be reversed by the Supreme Court, it will be a comparatively simple matter to readjust the estimate as it affects the Ohio case.

After considering the additional evidence offered and in harmony with the decision of the Statutory Court, we are not disposed to disturb our former finding as to costs of purchases from the Western Electric in determining the reproduction cost of property of the Ohio Bell Company as of June 30, 1925, nor are we disposed to further question the costs of the purchases from the Western Electric subsequent to that date except as to the price increase of 10.2% effective November 1, 1930, which increase is disallowed as to all purchases subsequent to said date.

The amounts in dollars claimed by the State as excessive for the years subsequent to 1925 are not impressive, when considered in connection with the volume of goods sold by the Western to the Bell Company during those years. Our former finding on this matter is affirmed.

Going Concern Value

The Commission in its opinion fixing the tentative value had occasion to discuss at length going concern value and allowed the sum of $3,592,040 or 3¾% of the value of the physical property as the proper amount.

Counsel for the Company points out that the Commission failed to include as part of the going concern value 3¾% of the undistributed construction expenditures of $16,523,387.00 amounting to $619,627.00 and in Statement No. 3 filed with the Commission on June 14, 1933, has readjusted the value by the addition of this amount.

The State on page 10 of its Brief in support of its claim that "Going Concern" value should be disallowed, merely asks that the Commission again refer to its former brief filed April 30, 1930.

[fol. 416] Going concern value has been discussed by the Commission in many cases, see:

Ohio Bell Telephone Co., P. U. C. O. Rep., 1931, P. 61 at P. 71.

Cambridge Home Telephone Company, P. U. C. O. Rep., 1930, Page 117, PP. 131134.
Appeal of Columbus Gas & Fuel Cany., P. U. C. O. Rep., 1930, p. 117, pp. 131-134.

It discussed the matter at length at the time of fixing the allowance in the instant case and the testimony need not be further commented upon.

In commenting on the undistributed overheads allowed in the former finding, the Commission said:

"The Commission may not, of its own motion, include in the items covered by these percentages, the item of going value, when the witnesses with the possible exception of Mr. Allensworth have each severally stated that it was not considered in their estimate of percent."

The Commission adopted 3¾% in substantial harmony with the amount allowed by the Illinois Commission and endorsed by the Statutory Court and not further discussed by the Supreme Court in the Chicago case.

Since our allowance of the going concern value in this case we again discussed the question in the Columbus Gas Case, supra. In that case we allowed 14% to cover the undistributed construction cost and said in reference to going concern value:

"We are not impressed with the fact that a going concern value amounting in the aggregate to millions of dollars can be built up on the theory that expenses are to be incurred after the property has been reproduced which were not, as a matter of fact, incurred in the original construction of the property."

Since our former decision we have had the recent illuminating case of The Los Angeles Gas & Electric Corporation v. Railroad Commission of California, 289 U. S., 287, 77 [fol. 417] Law Ed., 1180. In that case Chief Justice Hughes discusses at length under Division 8 the disallowance by the California Commission of an item in excess of $9,000,000 for "going value." The Chief Justice has marshalled in his opinion all the Supreme Court cases touching this point.

The Chief Justice says:

"The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates,

and, on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones."

"It does not give license to mere speculation; it calls for the consideration of the history and circumstances of the particular enterprise and attempts at precise definition have been avoided."

The Chief Justice details the finding of the California Commission and concludes that the base rate of $55,500,000 was sufficient to cover the value of the property including any element of "going concern value" that might exist. It was pointed out that certain items improperly included in the rate base might be deducted and that there would still remain a sufficient amount to cover any item of going concern. The Court says:

"The record affords no basis for criticising the allowance made by the Commission for materials and supplies and working capital, and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern."

"The fact that this margin in the rate base was not described as going value is unimportant if the rate base was in fact large enough to embrace that element."

In commenting upon the testimony of the witnesses as to going value, the Court says:

"It is necessary to analyze the testimony of these witnesses, as it is obviously too conjectural to justify us in treating the failure to include their estimates as a sufficient basis for a finding of confiscation."

We think this comment of the Court might well be applied in the instant case to the witnesses of the Company concerning this item, which is by them treated as "cost of establishing business" rather than as "going concern value" [fol. 418] and includes as a basis for the calculation many items to which the Supreme Court's designation "too conjectural" is pertinent.

In view of these decisions, we conclude that the Commission is not bound by the method in which the engineers presented their evidence as to the value of the property, nor by the fact that they each, save Mr. Allensworth, may have disclaimed intention to include within their estimate

the going concern value, but that we are free to determine whether or not the final value found by us, is, as a matter of fact, sufficient to include going concern value. In other words, the Commission is free to examine the testimony as to basic value to determine whether there has been sufficient valuation to cover those items that might contribute to going concern value.

As to the right of the Commission to use its own judgment, see Portsmouth Gas Co. v. P. U. C. O., 119 O. S., 24, at P. 57.

Going concern value must be proved as any other item of valuation. While it has been repeatedly held that it is a proper element to be considered no specific rule has been laid down as to what the value should be, but the particular conditions in each case must govern. No fixed rule can be based upon a per customer expenditure or a percentage of the property involved.

Mr. Schneider in his Exhibit No. 3 includes an item for "Cost of establishing business" and the Company's witnesses confined their testimony to "cost of establishing business" rather than to "going concern value."

Mr. Hagenah testified as to "going concern value" and estimated it at 10% of property value. Mr. Allensworth made no separate allowance for the reason that the Company did not show that it had ever incurred any cost of establishing the business that has not been absorbed currently as operating expense.

Our Supreme Court in the case of Cincinnati v. P. U. C. O., 95 O. S., 554, disapproved the item of cost of attaching business and in the case of City of Cleveland v. Public Utilities Commission of Ohio, 98 O. S., 462, it again expressed its disapproval of the allowance of any sum as a part of per- [fol. 419] manent capitalization for cost of attaching business, yet we prefer to consider that the evidence of the company, while specifically directed to the condemned item of attaching business, is relevant to the broader consideration of "going concern value" or "going value."

On the subject of going concern value we have several expressions of our Supreme Court and invariably it has held that where a sufficient allowance is made for overheads comprising engineering, administrative and legal expenses, liability insurance, taxes and interest during construction and for omissions and contingencies, the requirements of

going concern value have been met. Lighting Company v. P. U. C. O., 118 O. S., 592; Logan Gas Company v. P. U. C. O., 121 O. S., 507; Cincinnati v. P. U. C. O., 113 O. S., 259.

The latest pronouncement of the Supreme Court of Ohio on this matter is found in the case of Columbus Gas & Fuel Company v. P. U. C. O., decided June 21, 1933, 127 O. S., 102. The Court says:

"The members of the Commission were unanimous in the disallowance of going concern value as a separate item. In a number of cases this Court has affirmed such action by the Commission. City of Cincinnati v. Public Utilities Commission, 113 O. S., 259; Hardin-Wyandotte Lighting Company v. Public Utilities Commission, 118 O. S., 592; Logan Gas Company v. Public Utilities Commission, 121 O. S., 507.

Similarly the Supreme Court of the United States in a recent case, Los Angeles Gas & Electric Company v. Railroad Commission of California, supra, refused a going concern value claim of approximately $9,000,000.00. This Court is of opinion that in the instant case this refusal was proper."

Considering that our valuation is of a plant in actual and successful operation, and that we have made (*post*) what we regard as ample allowance for direct and undistributed overhead construction costs and that no specific costs have been established that are not covered by such allowance, and considering also that many items testified to are "too obviously conjectural" and giving weight to the definite [fol. 420] declarations of both the Supreme Court of the United States and of the State of Ohio, we have concluded that the testimony offered does not justify a separate allowance of going concern value, either as such or as "cost of establishing business." We therefore now hold that the amount, tentatively allowed by the Commission, of $3,592,040.00 as going concern value should be eliminated as a separate item.

Overheads—Direct and Indirect

To correctly determine the value of these several overheads, we must make a careful analysis of the testimony upon which they are based.

Distributed or Direct Overhead

In the theoretical reconstruction of a property the engineers add to labor and material costs certain percents for plant supervision, tool expense and incidental expense applied to the direct labor cost, and for supply expense a percent of the material cost. There are many details of these main divisions including sundry items which cannot be mentioned at length.

Unfortunately the several engineers do not so treat these overheads that the testimony of each may be accurately compared to the testimony of others, but we are able to give a fair analysis in spite of this lack of uniformity in treatment and terminology.

Plant Supervision and Tool Expenses (Accts. Nos. 221 and 232 to 256, incl.)

The most important overhead included in unit costs is that of plant supervision, which Mr. Williams estimates at 18.5%, Mr. Hagenah at 17% and Mr. Allensworth at 10%.

Mr. Williams in considering plant supervision at 18.5%, added 4% for the item of tool expense which was separately estimated by the other engineers.

[fol. 421] Mr. Hagenah estimates 17% for supervision excluding tool expense and as to that item he fixes an average of 2% based upon an analysis made by Engineer Dorsey who had estimated it at from 1.31% to 5% averaging slightly in excess of 2%.

Mr. Allensworth estimates 10% for supervision and 2% for tool expense.

Comparing the estimates of the three engineers for the two items of plant supervision and tool expense, we find 22.5% for Williams, 19% for Hagenah and 12% for Allensworth, all such percentages being confined to labor costs.

Visualizing a theoretical reconstruction of all the different plants, we are of the opinion that the costs could be kept within the limits allowed by Mr. Hagenah as it must be apparent that if the Company were engaged in a wholesale reconstruction of all its exchanges in its Ohio territory, it could well develop more pronounced economies than were disclosed in the actual construction upon which Mr. Williams bases his estimate. This allowance is estimated at

$3,016,041 for plant supervision and $338,939 for tool expense, a total of $3,354,980.

We do not lose sight of the claim of the Company that the actual construction on which Mr. Williams based his judgment was of such importance as to be wholesale rather than piece-meal.

Incidental Expenses (Accts. 251 to 253, incl.)

This item is associated with plant supervision and is by Mr. Williams and Mr. Allensworth based upon direct exchange and toll labor and by Mr. Hagenah on direct toll labor only.

This incidental expense is not very satisfactorily explained or sustained by the witnesses. Mr. Dorsey, an engineer for Mr. Hagenah, allowed 20% of the labor costs for this item and stated, R. 2161, that it covered the cost of boarding the men and taking care of them on the toll line construction work, but that he allowed nothing for board and lodging in the construction of the exchange plant.

[fol. 422] The development of this item by Mr. Dorsey appears on the Dorsey Exhibits Nos. 2 and 4. When this is translated into dollars in Account 251, Toll Pole Lines, Account 252, Toll Aerial Cable and Account 253, Toll Aerial Wire, it is estimated at $655,360—$388,888 being attributed to toll pole lines, all of which we allow. An allowance for board and lodging should not be made for the construction of exchange lines, on a reproduction basis.

Transportation of laborers and material is covered by the several engineers under different items so that it is impossible to make a comparison of the amount estimated by each for this expense, but we are convinced it is amply covered by an allowance for incidental expense.

Supply Expense (Accts. 221 and 231 to 256, incl.)

The item of supply expense is based upon material and is next in importance to plant supervision based upon labor and we have allowed the estimates of the engineers Williams and Hagenah for this item, and estimate it at $2,188,885. For details see Rec. 556-2153-2160-3287-3288, the allowance being 6% of material value in Accounts 231 to 233; 241 to 245 and 251 to 255 and 4% in Accounts 221, 234, 235, 246 and 256.

Contingencies (Accts. 221, 222, 234 and 235)

This item is computed by Engineer Williams at 1% of the material cost in Accounts 221, 222 and 234 and at 10% of the labor cost in Account 235. It covers sundry items explained, Record, page 535. Hagenah agrees with Williams as to the valuation of the property to which this overhead was added and it is estimated at $145,553, and allowed.

Building Overheads (Acct. 212)

In the estimate of the theoretical cost of reconstructing buildings the overhead percents are not added separately to the labor or material cost, but are imposed upon the total [fol. 423] of such costs for the completed structure and include such items as contractors' overheads and profits, insurance, architects' fees and supervision, amounting in the aggregate to approximately 16.7% of the labor and material cost of the building. The total of such overheads included by the engineers in the value of buildings is estimated at $1,280,861, and is allowed.

Western Electric Engineering, Service and Inspection (Accts. 221, 222, 233, 234, 243 and 253)

There is added to the cost price paid to the Western Electric Company for goods furnished by it to the Bell Company, a 7½% overhead for engineering fees on central office telephone equipment amounting to approximately $931,260 and more than 4% for service and inspection of wire furnished by the Western Electric, amounting to approximately $169,118, both of which items we have allowed as included by the engineers in their valuations of the property.

Direct Overheads Translated into Dollars

The entire physical property as disclosed by the appropriate I. C. C. account numbers show as a result of our allowances the following estimated sums added to the unit costs, entering into the reproduction of the physical property:

Plant Supervision	$3,016,041
Tool Expense	338,939
Board and lodging applied exclusively to toll line construction	655,360
Supply Expense	2,188,885
Contingencies	145,553
Miscellaneous applied exclusively to building construction	1,280,861
Western Electric Engineering	931,260
Western Electric Service and inspection applying to wire	169,118
Total	$8,726,017

This total added reconstruction value for distributed or direct overheads of $8,726,017 reduced to the present value, [fol. 424] amounts to approximately $7,496,264. All these sums we have allowed at their appropriate places.

There are certain other overheads included in unit costs which could not be sufficiently identified to permit separation. These omitted items consist of such overheads as stable and garage expense included in labor units and freight, cartage, loss and breakage covered in material units, which in our judgment have been properly allowed.

Undistributed Construction Expenditures

After the above direct overheads have been added to the physical value of the property there is still the further group of percents of overhead expenses identified as such, representing undistributed construction expenditures.

The Commission in its former opinion on page 70 stated:

"There is not the variance among the witnesses for the company and the State in regard to undistributed construction costs that we find in many other items in this case. The various witnesses have estimated this item as follows:

Williams and Schneider	17.11%
Sloan	16.67%
Hagenah	17.25%
Allensworth	14.54%"

Considering the substantial additions that result from these percents, the Commission has made a further search-

ing examination of the record that it may be advised as to the justness of these overheads and whether or not any of them are excessive and subject to elimination or revision.

Guided by the evidence that we can gather from the record and applying our own judgment as to the weight of such evidence, we find 15% ample to cover undistributed construction expenditures, and we have broken this general item into the several elements—Omission 1%; Interest During Construction 6%; Engineering 5%; Taxes During Construction 1%; General Expenses 2%—Total 15%. The evidence upon which we base our conclusions as to the [fol. 425] component parts of the total allowance is pointed out below.

Having allowed 15% for undistributed construction expenditures, it does not follow that this shall be applied to all the physical property, plus the allowance for direct overheads. This is so for the reason that this 15% is based upon various items, some of which are applicable to all the property and some applicable to only a portion thereof. It is true that some of the engineers in testifying as to these undistributed construction expenditures have stated that in order to correctly estimate their value, the percent should be applied to the entire property and not limited to the percent of that property to which such particular overhead applies. To this view we do not subscribe.

It will be impossible within the proper length of this opinion to analyze the testimony of the several witnesses on undistributed overheads and we must confine ourselves to naming the pages and exhibits on which we based our final conclusion.

Omissions—1%

Williams, (Record 133, pages 140 to 146 of Williams' Exhibit 3-B, and pages 110 to 116 of Williams' Exhibit 7-C); Schneider, (Record 199-201 and 656-674); Hagenah, (Record 2322 and 2323) and Allensworth (pages 3367-3371) testify in detail to this item, giving their several conclusions.

It has been well said that the engineers assume that all inaccuracies in inventories work to the detriment of the Company, whereas by the law of averages it is just as probable that they work to the benefit of the Company. We allow 1% for this item of omission. We feel, however, that the 1% for omissions should not apply to those items where

an omission could not possibly occur or would be a risk properly assumed by the contractor and we do not believe that it should in this case be applied to rights of way, land, buildings or general equipment. We cannot conceive that there would be any chance of omissions in any of this class of property.

[fo 426] Interest During Construction—6%

This item is testified to by the various witnesses (Record pages 697-709-767-2324-2327-3170-3368) and is computed at 6% except by the witness Hagenah who computes it at 6½%, all basing their estimates upon the theory that the theoretical reproduction project would involve a five year period, but that a service performing unit will be completed within a period of two years, for one-half of which time interest is computed upon the full value of the completed unit. We agree to the allowance of 6% and the average period of one year and that it should be applied to the full value of the completed property.

Engineering—5%

The item of engineering is discussed by the various witnesses testifying on pages 677-678-685-759-2329-3170-3829. Williams, Schneider and Allensworth agreed on 5% for this item, while Mr. Hagenah estimates it to be 6%. We have accepted 5% as the correct amount. We are, however, of the opinion that this 5% should not be applied to Right of Way—Account No. 207; Land—Account No. 211; Buildings—Account No. 212; Switchboards installed by the Western Electric Company included in Central Office Telephone Equipment—Account No. 221; Other Equipment of Central Offices—Account No. 222; Private Branch Exchanges—Account No. 234; Material value of wire in Interior Block Wires—Account No. 233; Exchange Aerial Wire—Account No. 243; Toll Aerial Wire—Account No. 253; nor to General Equipment—Accounts No. 261-265, inclusive.

The valuation of buildings was made by company witness Meyers under Account No. 212. The witness proceeded upon the assumption that the buildings were to be reconstructed by contractors and not by the Company, and he has added to the estimated contractor's cost overhead and profit for the contractor of 8%, an architect's fee of 6%, and architect supervision of 1½%, together with such items

as 7% of the payroll for insurance and 1½% of the bid [fol. 427] price for bond. In our judgment, the present value of buildings as arrived at by the method pursued by Mr. Meyers should not be further enhanced by allowing as an addition thereto an engineering fee. We disallow this engineering fee of 5% for buildings.

Central Office Telephone Equipment, Other Equipment of Central Offices and Private Branch Exchanges have an allowance of 7½% for engineering added to the material cost of switchboards installed by the Western Electric Company (Record 536-538). Interior Block Wire, Exchange Aerial Wire and Toll Aerial Wire have in their unit costs an addition of 4.7% of material value for Western Electric Company service and inspection.

We are not impressed with the claim that after the Western Electric has been allowed, in addition to the cost price quoted to its associated companies 7½% for engineering, that there should be a further sum of 5% as undistributed overhead for engineering, and we disallow the same.

General Equipment is not of such a nature as, in our judgment, to require an engineering service in addition to the overheads already allowed.

We are conscious of the fact that there are certain engineering services that would be required of and rendered by the Company's engineers in making preliminary surveys and estimates, as well as during installation, but we are of the opinion a general charge of 5% of the entire value of the physical property is not justified. The fair cost of this service is amply covered by the engineering and supervisory fees that we have allowed, both as direct and indirect overheads. Engineers' fees as such have been allowed in the amount of $2,779,056.

Taxes During Construction—1%

This item was testified to by the various witnesses on pages 261-693-695-763-2326. Mr. Hagenah includes the same in general expenses. We conclude that 1% is sufficient to cover this item and that it should be applied to all the property.

[fol. 428] General Expenses—2%

We allow general expenses in the sum of 2%. This item was testified to by the several witnesses on pages 689-760-

2325-3153-3267-3284. We allow this percent and apply it to all property.

Undistributed Expenses in Dollars

The aggregate of the undistributed construction expenditures as developed by the several percents aggregating 15% and applied to present value restricted as indicated in Appendix "D," and translated into dollars is as follows:

Omission 1%	$697,120
Interest during construction 6%	4,953,996
Engineering 5%	2,779,056
Taxes during construction 1%	825,666
General Expenses 2%	1,651,332
Total as of the day certain	$10,907,170

It must not be lost sight of that the percents we allow for undistributed construction expenditures attach to the direct overheads included in the unit cost of physical property already allowed in the sum of $7,496,264 which reduced to dollars amount to approximately $1,000,000 from superimposing one class of overheads on another.

Total Overheads

Distributed and undistributed overheads for which we have allowed an estimated total of $18,403,434 are 19.6% of the entire valuation of the fixed capital including all overheads, and 24.5% of the total value of the fixed capital exclusive of overheads.

We have discussed overheads somewhat at length and have translated them into dollars in order that it may be apparent that there have been very substantial allowances made for items closely related to those associated with going concern value. They are, of course, not identical, but if we were to allow going concern value as claimed by the company there would be many items which would overlap. See Going Concern Value Supra page 55 of Appendices.

[fol. 429] Right of Way

The Commission in its findings made January 10, 1931, determined that an allowance of 3% of the value of the outside plant for right of way was reasonable; taking said

per cent as the measure of the value of right of way the Commission at that time fixed said value at $1,568,281. Protests to the amount of said valuation were filed by the Attorney General and various representatives of the municipalities and communities herein affected as well as by the Telephone Company, one side contending the amount allowed is too high and the other too low. As a result of these protests we have again gone in to the evidence from which we find that the witnesses testifying upon the subject have relied upon different lines of reasoning for their final conclusion as to right of way value, some using a per cent of the cost of the outside property and others using a cost per pole basis.

Section 499-9 of the General Code does not require the Commission to evaluate the right of way at its reproduction cost new, but rather contemplates that the Commission determine the fair value thereof. We fail to find in the record any list or record of right of way owned by the Company, nor is there any evidence as to the market value as of the date certain. We conclude too, that as there is no market for right of way such as owned by the Telephone Company in this case, no valuation can be based upon market price.

It may also be noted that Mr. Williams, a witness for the company, testified that if the Company were reproducing the property, it would, in his judgment, be necessary to obtain right of way rights from either the cities or the property owners or somebody else. There is no evidence to the effect that the company would, in the event of reproduction, be required to pay any political sub-division for right of way.

The Uniform System of Accounts for Telephone Companies, in effect since 1913, requires right of way be included in the capital accounts and property values of a telephone company as follows:

[fol. 430] "This account should include the cost of all lands and interest in land acquired for the location of telephone wires, cables, pole lines and conduits; salaries and expenses of right of way agents; expenses of appraisers and of juries, commissioners, or arbitrators in condemnation cases; real estate brokers' commissions; cost of plats, abstracts, notarial fees, examination of titles, recording deeds, etc."

The company was therefore required to carry on its books the aforesaid accounts for right of way. The methods of fixing value of property rights, which should be a matter of record, as adopted by the witness for the company, do not appear to us satisfactory, and we conclude that in the present case the actual experience of the company as shown by its books is the safest guide to follow in fixing fair value of its right of way. The books of the Company show the right of way value as of June 30, 1925, to be $1,243,034. (Wood Exhibit 15, Line 25.) Our Supreme Court in the recent case of The Columbus Gas & Fuel Company v. Public Utilities Commission, 127 O. S. 109, stated that in valuing leaseholds used and useful, the Commission may consider book value. We consider that such rule is applicable to right of way in the present case. We therefore hold that the best evidence of value in the record in this case is the book value and therefore conclude that $1,243,034 is the proper amount to be allowed as the fair value of right of way, and the former allowance is set aside and held for naught.

Working Capital Including Material and Supplies

The Commission in its tentative valuation allowed for working capital including materials and supplies $3,500,000. Protests were filed by both parties to said allowance.

The various witnesses who testified on this subject had separate or special formulas in arriving at a sum to be allowed for this item. Mr. Williams' figure of $6,350,000 is based on 5% of the reproduction cost new of the physical plant, less general equipment; Witness Sloan based his figure on consideration of eight weeks operating expense as [fol. 431] one factor and 15% of gross revenue as another factor, rounded off at approximately $7.00 per telephone. Witness Hagenah based his allowance on five different methods, taking the average thereof as his final judgment for the amount to be allowed, and witness Allensworth based his on materials and supplies on hand on the day certain plus one month's operating expenses covering two payroll periods.

The matter of resorting to an arbitrary per cent for such an allowance does not appear to us to be a satisfactory rule to be applied in this case and it would seem that the financial requirements of this particular company for working

capital should be determined in a more scientific manner giving due consideration to its balance sheets, operating statements, credit requirements, billing practices, purchasing contracts, etc. If we cannot adopt the per cent rule as urged by the Witnesses Sloan and Williams, we likewise cannot adopt Mr. Hagenah's figure for it is based upon an average of five methods which include a number which we must reject.

Company witness Cox testified that purchases from the Western Electric Company are billed at the end of the current month and are payable thirty days thereafter. This indicates an average forty-five day line of credit on the bulk of purchases. Exchange revenues are billed subscribers in advance and toll revenues are billed in arrears. Exchange revenues (Account 500) average about four times the toll revenues (Account 510) indicating an advantage to the company. Sizeable amounts are carried on the company's books representing subscribers' deposits, and service billed in advance indicating that a part of the working capital, at least, is furnished by subscribers. It therefore appears that it is hardly necessary to speculate as to what is a proper allowance for this item when we have before us the actual experiences of the company.

It is our conclusion that the most satisfactory manner of arriving at the amount to be allowed for working capital is to take the average operating expenses for one month plus the value of material and supplies on hand June 30, 1925. [fol. 432] This conforms to the basis testified to by Mr. Allensworth and to basis number four submitted by Mr. Hagenah.

In determining operating expenses we exclude reserves for depreciation but allow expenditures for rent and for taxes assignable to operations. Using this method we find the average operating monthly expenditure for the year 1925 to be as follows:

Current Maintenance Expenses	$395,363
Traffic Expenses	626,387
Commercial Expenses	191,611
General and Miscellaneous Expenses	81,344
Taxes assignable to Operations	215,914
Rent	47,547
Total (Excl. Deprec.)	$1,558,166

The value of materials and supplies as of June 20, 1925, is $1,390,336.32, a total of $2,948,502 which the Commission allows for working capital and materials and supplies as part of the rate base and the amount of $3,500,000 heretofore determined upon is set aside and held for naught.

The same method will be applied in fixing amount for working capital and materials and supplies for subsequent years excepting that the amount of materials and supplies will be determined by taking the average of the amount on hand at the beginning of the year and end of year. The amounts to be allowed for the subsequent years are as follows: 1926, $2,923,563; 1927, $3,052,701; 1928, $3,218,291; 1929, $3,451,024; 1930, $3,250,138; 1931, $2,804,990; 1932, $2,497,696; 1933, $3,044,894. See Appendix "E" for details.

Law Governing Case

While this case has assumed the status of a company-wide case by virtue of the order of the Commission of October 14, 1924, it had its inception in part in the filing of new schedules by the company providing for increased rates and in part by the Commission's independent investigation. [fol. 433] The combined cases were tried in compliance with the statutes as they existed prior to the passage of the Carpenter Act, amending the Pence Law (113 O. L., p. 16).

Under the provisions of Sections 499-9 et seq. and 614-20 et seq. all values have been fixed as of a day certain, to-wit June 30, 1925.

Under the sanction of Section 499-11 and authoritative decisions much evidence has been introduced on behalf of the utility and of the State as to extensions, improvement and other changes in the condition and value of the property for each successive year subsequent to June 30, 1925.

When a rate goes into effect by virtue of the provision of the statute, upon the filing of the bond, such rate cannot be altered until the Commission has found and fixed a different rate, thus precluding any alteration of the rate as the value of the property may change, due to additions and betterments. Logan Gas Company v. Public Utilities Commission of Ohio, 115 O. S. 107. City of Cleveland v. Public Utilities Commission of Ohio, 126 O. S. 91.

The just and reasonable rate to be fixed by the Commission, as of a date certain in lieu of the schedule rate, may, however, be properly influenced not only by the condition

that exists as of the day certain, but in consideration of predictable or experienced changes in order that the rate for a reasonable time may produce for the company a proper return upon its property used and useful. This we must consider in compliance with the decisions of the Supreme Court of the United States to the effect that an honest and intelligent forecast of probable values made upon a review of all relevant circumstances is essential, and in every case the future as well as the present must be regarded to determine whether the rate is yielding or will yield a reasonable return upon the property at the time of investigation and for a reasonable time in the immediate future. See Bluefield Water Works v. P. S. C. of W. Va., 262 U. S. 679; McCardle v. Indianapolis Water Company, 272 U. S. 400.

[fol. 434] In the Chicago case, the Supreme Court said:

"It is the duty of the Federal Court, in determining whether utility rates fixed by a state commission are confiscatory, to find the facts as to the property value, revenue and expenses of a utility during the interval between the issuance of the order and the date of the court trial, since an order confiscatory when made may subsequently become valid, and vice versa."

The recent case of Central Kentucky Natural Gas Company, Appellant, v. Railroad Commission of Kentucky, decided by the Supreme Court on December 1, 1933, furnishes further authority for the consideration of changes occurring subsequent to the date certain.

In view of these statutes and decisions, we are required to ascertain the value of the property as of the date certain and base the rate upon such value and upon the income and expenses of the company at that time, with the modification that we ascertain the value of the property in succeeding years with due consideration to price trends and consider revenues and expenses of those years in order that the rate fixed shall produce an income fair to both the rate payer and the company for a reasonable time in the immediate future, from the date certain.

It is probably true that this is more imperative in considering the question of confiscation in the Federal Court, than in the fixing of a rate by the Commission, yet as the rate fixed by the Commission will finally be tested on the

question of confiscation, that infirmity in a rate may be avoided by following the rules by which the question of confiscation is tested.

Price Trends

When we examine the condition of the company's property, both as to value and income, subsequent to June 30, 1925, we must take into consideration not only the net additions, but also changed conditions and price trends, that we may determine whether the rate, fixed at the day certain, produces a revenue sufficient to afford the company a just return for a reasonable time in the immediate future.

[fol. 435] In the case of the Central Kentucky Natural Gas Company, Appellant, v. Railroad Commission of Kentucky, Supra, the Supreme Court, in discussing the refusal of the Court below to take into account the effect of changed conditions said:

"That restriction also necessarily excluded from consideration the profound changes in values, costs of service, consumption of commodity and reasonable return on invested capital which we judicially know took place during the period of more than five years, while the case was pending before the Commission and the Court."

In numerous cases, Courts have indicated that they may take judicial cognizance of the downward trend of prices during the years of the depression. We feel that the Commission may likewise take notice of such fact. If we did not do so, it might well happen that a rate fixed for 1925 upon the then value of the property would subsequently be inadequate to afford a just return if the additions and betterments were considered and price trends disregarded, but that this same rate would be sufficient over that term of years when due consideration is given to price trends decreasing the value of the property upon which the return must be earned. Sections 499-11 and 499-15, G. C., provide the method of ascertaining the facts. The Commission may resort to any information available to keep itself informed of extensions and improvements and other changes in the value of the property.

We have endeavored from such sources of information as are available to correctly measure the price trends of telephone property including Accounts 211 to 265, since the day

certain. A study was made of the cost prices furnished by manufacturers of telephone equipment over the several years. The trend of land valuation was ascertained from examination of the tax value in communities where the company had its largest real estate holdings, confining such to urban property only. For building trends resort was had to prices indices of the Engineering News Record, a recognized magazine in the field of engineering construction. Labor trends were developed from the same sources. Re- [fol. 436] sort was also had to the finding of the Statutory Court in the Chicago case and its study of price level of sales of the Western Electric Company. That Court was there dealing with December 31, 1920, as the date certain and considered the level of that date as 100%, whereas we are dealing with a price level subsequent to June 30, 1925. The trend in price for each year as compared to the preceding years, indicated in the Chicago decision, taking the level of December 31, 1920 as 100%; was 1921, —1.7%; 1922, —10.7%; 1923, +0.2%; 1924, —5.6%; 1925, —1.1%; 1926, —8.7%; 1927, —4.9%; 1928, —10.3%; 1929, —8.6%.

In the Chicago Case, the Court disallowed the advance of 10.2% in Western Electric prices as of November 1, 1930, but held that plaintiff was entitled to a maintenance of the 1930 price level during the years 1930, 1931 and 1932. In harmony with the decision of this Court, we hold that the price for 1931 and 1932 for Western Electric should not be increased.

It would appear that the Chicago Court in fixing its price trend considered only the price trend of Western Electric purchases, probably on the assumption that it was a correct index of the price trend of all telephone property. We, however, have thought it pertinent, as above indicated, to secure price trends of telephone properties from the sources we have indicated in addition to the price trend of the Western Electric which we have applied to equipment sold by that company. We are conscious that there may be some errors in this computation of price trends, but we feel that we are well within the line of safety in that we have considered only price trends as affecting telephone property, and that such trends are largely built upon the prices of the Western Electric which have not declined to the extent of general commodity prices.

Taking the date certain, June 30, 1925, as 100% and con-

sidering the added equipment for each year as 100% as of the year of installation, our examination develops a composite trend applicable to the entire property, exclusive of right of way and working capital, as of the beginning of [fol. 437] the respective years and related to the preceding year, as follows, 1926, 98.73%; 1927, 96.97%; 1928, 99.20%; 1929, 101.45%; 1930, 95.65%; 1931, 93.95%; 1932, 88.71% and 1933, 102.96%. The figures supporting these percentages are too numerous to set out in detail but the manner in which the percentages have been applied to the value of the property for each year is shown in Appendix "B."

An interesting discussion of price trends will be found In re Chesapeake and Potomac Telephone Company, decided by The Public Service Commission of Maryland, November 28, 1933. This Commission considered numerous indices in arriving at its conclusion as to the price trend for the telephone company and exhibits a graph of various price trends and the composite trend arrived at.

When we plot the price trends found by us and compare our graph with that of the Maryland Commission and the graph of the price trends by the Chesapeake Company, we find that all are practically parallel until 1930. After that date our graph parallels that of the Maryland Commission, but indicates values practically an average of those claimed by the Telephone Company and found by the Maryland Commission.

The graph exhibited in the Maryland Commission's decision does not cover the year 1933. During 1933, we find an upward trend in both as to labor and material but a downward trend as to land value, the average of all property indicating a slight upward trend. (See graph, Appendix "N.")

Effect of the Company Wide Case

A short review of the "Company-Wide Case" may be pertinent.

The case, known as the Company-Wide Case, was instituted by the Commission on its own motion in October, 1924, for the determination of the property valuation, revenues, expenses and rates of The Ohio Bell Telephone Company for its service as a whole. At that time there were pending many so-called Robinson Law and Pence Law cases, involv- [fol. 438] ing the rates for separate exchanges, which had

been made effective under bond as provided by those laws. Following that, additional Pence Law cases arose out of the filing by the company of new rates for other exchanges.

With the institution of the company-wide case, the Commission as then constituted determined not to proceed at that time with the separate Robinson Law and Pence Law cases, and the Commission's inquiry has ever since proceeded on the company-wide basis, without separate testimony as to the property value, rates, etc., for the Robinson and Pence Law cases. This course originally had and apparently ever since has had the approval of the City Attorneys interested in those cases, although the Telephone Company has always insisted upon the right to present, and has offered to present, separate testimony with respect to them.

The "date certain" of the inquiry in the company-wide case was June 30, 1925. For the subsequent years the cost of the net additions to the property has been shown.

In view of the holding of the Ohio Supreme Court in the recent case of The Columbus Gas & Fuel Company vs. Commission, No. 23864 (decided after the company-wide case had been submitted to the Commission), that in fixing the rates of a public utility, the municipality, is the entity, the question arises whether the Commission can lawfully decide the Robinson and Pence Law cases on the record in the company-wide case as it now stands, find the rates heretofore collected in those cases to be reasonable or unreasonable and order the refunder of any portion of the rates which may be found to be unreasonable; or whether the Commission should now require or permit the Telephone Company to submit evidence of its property value, revenue and expenses for each of those cases separately.

The point has been raised that the Commission cannot fix a just rate for separate exchanges, whether same are involved in Pence Law Cases or not, by considering the value of the property en masse, and that therefore it is without the necessary information to fix a just rate for each exchange as distinguished from a rate based upon the value of the entire property.

[fol. 439] Grouping Exchanges of the Company

The Company divided its exchanges into twelve groups and fixed rates for the several services including business,

residence and switchboard. Within each group there are varying charges presumably dependent upon the value of the property as well as upon the cost of the service rendered. This matter has been worked out with great care by the Company and we must assume that the charges for the several services, before the protested advances, within each group and within the exchanges attached to each group were substantially based upon the value of the property used and useful to furnish service to the subscriber.

The Ohio Bell Company operates 163 exchanges, large and small, throughout the territory served by it which includes, together with its connecting companies, the entire State of Ohio excepting Hamilton and Clermont Counties and a portion of Warren and Butler Counties. It has connection with over 300 separate telephone companies in Ohio, not Bell owned. Of the 163 exchanges, 46 are involved in rate proceedings under the Pence Law, the advanced rates of which are now being collected under bond. The rates of the balance are being investigated, but not under the Pence Law.

Number of Company Stations

The Company, through its exchanges, served stations as follows: June 30, 1925, 520,604; June 30, 1930, the year in which largest number was reached, 717,832; April 30, 1930, the month in which largest number was reached, 721,832; June 30, 1931, 700,330; June 30, 1932, 633,385; June 30, 1933, 529,301; December 31, 1933, 531,426. During 1932 and 1933 there was a severe loss of stations, with a slight recovery during the last six months of 1933.

Exact agreements between rates in municipalities having substantially the same population cannot be expected because there will be a difference in costs due to varying requirements of construction. The size of several communities and the telephone development may be similar, but one [fol. 440] community may be limited in its service to its own boundaries while another may have free service to nearby places. Costs of both the construction and service in communities of comparable population may vary and economic differences between the subscribers living in such communities may justify slightly different rates. All services furnished within the City of Cleveland are measured and

the rates for suburban Cleveland are fixed in varying amounts dependent upon the class of service rendered.

It is the judgment of the Commission that the Company's rates as fixed for each exchange before advanced rates were scheduled, represent a balanced consistent rate structure for the entire territory without unreasonable inequalities as between the rates of the several exchange areas, and are reasonably in harmony with the value of the property used in each exchange. If we were to attempt to determine a separate rate for each exchange upon the appraised value of the property used at that exchange, we would be led into an intolerable lengthening of this case, without any assurance that the rate that might thus be established would in any substantial way vary from the relative rates worked out by the company in its group system. This is in harmony with the views expressed by the various legal representatives of the several municipalities as evidenced in a joint meeting with the Commission April 18, 1933, R-5682-5726, especially 5717 and 5721.

In a news dispatch from Cleveland under date of April 20, 1933, widely published throughout the State of Ohio, Mr. Randolph Eide, President of the Ohio Bell Telephone Company, is reported to have said in commenting upon the meeting of the City Solicitors—

"Rates for telephone service have been under investigation as a whole on a company-wide basis since 1924. To begin now revaluing the company's property devoted to service to the public exchanges would incur a large expense, both to the company and the municipalities, and would result in additional years of delay in final determination of the case.

Rates in general bear a reasonable relation as between the various grades of service in the community and as between exchanges of the same size and characteristics.

[fol. 441] It would appear that the suggestion at Tuesday's meeting of the Commissioners and City representatives to value the company's property as a whole to determine whether the rates represent a well-balanced schedule as between classes of exchanges and as between exchanges of the same class, affords an opportunity to work out a solution to the problem. The company always has been willing to co-operate along reasonable lines and will continue to do so in the present instance."

In speaking editorially of the suggestion of fixing the rate for each individual community, on the basis of valuation, expenses and revenues, a leading Ohio metropolitan paper pertinently said:

"Unless the Commission can get the money to continue to employ an army of public accountants, it is estimated that four or five years more would be necessary to break down the valuations, expenses and revenues to apply to each municipality. To set rates by classification on the basis of state-wide figures, would be a much speedier process, perhaps could be accomplished in four or five months."

At the meeting of the City Solicitors, on April 18, 1933, the Chairman of this Commission reviewed in detail the situation arising out of the company-wide case.

The Company Estopped

The Company has at intervals asserted that it reserved its right to test the justness of the rate for each exchange by a separate determination of the value of the property and net income of each by the usual methods pursued in rate cases. The last communication of the company to this effect is dated December 22, 1933, wherein it referred to reservations of its right to offer evidence in the separate cases of the property value, revenues and expenses for the period under investigation for all the Robinson and Pence Law cases separately. The letter of December 22nd, concludes:

"The Ohio Bell Telephone Company now renews its offer, above referred to, insists upon its right to submit the evidence so offered, and requests that the Commission set a date on which the introduction of the evidence may be commenced."

[fol. 442] To follow the suggestion made by the Company would be to nullify most of the work done in this case since the consolidation in October, 1924, of all the then pending cases into the company-wide case. There has been a definite recognition of the propriety of a company-wide method of fixing rates by the Commission, the Legislature and by all parties, except as the Company asserted a reservation, and to halt the determination of this case now and turn back

to the situation that existed in 1924, and begin the trial of each Pence Law case separately, would be intolerable. The case must proceed to a conclusion along the route then mapped out and since followed at a great expenditure of time and money.

The reservation of a right as now asserted by the Company is not in harmony with its participation in company-wide valuation. If the Company was not willing to submit to the Order of Consolidation of October, 1924, it should have taken exceptions at that time and had a court review the legality of the order of the Commission. It is too late now to complain of a method in which it seemingly acquiesced, even though it asserted a reservation. We think the Company is estopped by its actions during the long trial of the Company-wide case.

The Law

We are not unmindful of the holding of the Supreme Court in the Columbus Gas case that the unit established by the Ohio constitution for dealing with public utility service is the municipality, and not the utility. We do not attempt to avoid this principle, but we do find that under the method pursued in the trial of this case we are fully justified in fixing the rate to be paid in each municipality upon the several relative valuations recognized by the Company when it originally grouped its exchanges and established rates for the several services furnished by each, before the advances which led to the protests now under investigation.

We are not without precedent and authority upon this matter. In its order (P. U. R., 1924 A-1, at page 9) the [fol. 443] Indiana Commission, referring to Company-wide rate fixation, very similar to the situation in the present case, said:

"The fixing of rates is a matter which involves considerations other than the matter of revenues and expenses and it is quite practicable that rates be fixed that will be just and reasonable to all subscribers by a grouping of exchanges of like character and the application of a certain schedule of rates to all the exchanges in that group rather than by an attempt to fix the rates for each exchange separately. The policy of consolidating the whole Indiana Bell Telephone rate investigation into one order and con-

sidering it as one unit has been adopted by several other states and has been found to be very much more satisfactory to the public, and to the utility."

In Wabash Valley Electric Company v. Young, 287 U. S., 488, 77 L. ed., 348, the Supreme Court said:

"Normally, the unit for rate making purposes, we may assume, would be the entire interconnected operating property of a utility used and useful for the convenience of the public in the territory served, without regard to particular groups of consumers or local subdivisions. But conditions may be such as to require or permit the fixing of a smaller unit."

See also—In re: Uniform Telephone Rates in Pennsylvania, P. U. R., 1917 D, 259; In re: Mountain States Telephone and Telegraph Co., P. U. R., 1917 B, 277; In re: Indiana Bell Telephone Company, P. U. R., 1924 A-I, p. 9.

Under the circumstances, we are of the view that we cannot accede to the request of the Company as indicated in its letter of December 22, 1933.

Conclusion As To Valuation

After re-examination of the former finding of this Commission, we now find that the value of the property of The Ohio Bell Telephone Company, as a plant in actual and successful operation, used and useful in the service of the public in all the exchanges of said company, within the State of Ohio, and in intrastate toll service, upon a reproduction new less depreciation basis, as of June 30, 1925, was $93,707,488. [fol. 444] The difference between the Tentative Valuation heretofore found, and the Final Valuation herein fixed, is as follows:

Tentative Valuation, Finding January 10, 1931		$104,282,735
Deductions—		
Allocation to Interstate Service	$2,714,788	
Right of Way reduced to book value	325,247	
Undistributed Construction Expenditures reduced	3,391,674	
Separate Item Going Concern Value	3,592,040	
Working Capital including Materials and Supplies reduced	551,498	
Total Deductions		10,575,247
Final Valuation per Appendix "A"		$93,707,488

Considering additions and betterments and price trends we find the value of such intrastate property was, as of dates subsequent to June 30, 1925, as follows: 1926, $101,767,774; 1927, $111,036,522; 1928, $122,417,735; 1929, $134,765,576; 1930, $145,683,047; 1931 $145,271,663; 1932, $133,625,655; 1933, $126,250,206, an average for the nine years under consideration, of $123,836,185.

The detailed tabulation of these figures will appear in Appendices "A" and "B." Supporting detail upon which the valuation is based will be further found in Appendices "C," "D," and "E," all of which are made a part of this finding.

All protests filed by either the Company or by the Attorney General on behalf of the telephone users of the State of Ohio or by the several legal representatives of municipalities, touching the valuation of the property, not in harmony with this finding, are hereby overruled.

[fol. 445] Revenue and Expense

Observations on Relative Importance of Rate Base and Expenses

Having found the value of the property of the company used and useful in the service of its patrons, we enter upon

the study of the income derived from the property and the expense of its operations.

Some general comment may properly be made as to the relative importance of the two distinct problems, valuation and net income, which jointly control the proper rate ultimately to be charged for service.

Apparently during the whole course of this proceeding, the valuation has been over-emphasized and years have been consumed on this problem with relatively slight attention paid by the parties to the investigation of revenue and expenses. This seems to be common to most rate cases.

This over-emphasis will appear when we realize that the rate to be charged the consumer should be such as to produce a fair return upon the value of the property. This return is but a per cent of the value. Assuming that we hold that the company is entitled to a net return of 7% upon the value of its property, every million dollars of value will affect the rate payers only to the extent of $70,000 annually, which when related to the number of rate payers in peak years, is less than ten cents per year for each, although a substantial sum for the Company. However, every dollar of expense must be produced by the rate-payer, so that every dollar charged by the company for its operation or as a reserve, becomes a dollar in which the rate payer is one hundred percent interested. Based upon a 7% rate of return, each dollar of revenue and expense has over fourteen times as much weight in the ultimate result as any dollar of valuation. The rate payer and the company, therefore, are deeply concerned whether or not expenses have been improperly charged either as to the character or amount. [fol. 446] We therefore approach the analysis of certain of the expenses asserted by the company and the allowance to be made for them with full realization of their importance, both to the rate payer and to the company.

Income

We assume that the gross income as presented by the company in its various exhibits is correct, as accurately reflected from the books of the company. No claim has been made by the State that the books have been inaccurately kept so far as they reflect the gross income. This appears on Appendix "F."

Expense of Depreciation

The Commission is charged under the statute with the duty of making reservation out of the income for surplus, depreciation and contingencies, and all such other matters as may be proper according to the facts in each case.

Section 614-49 and 5[illegible] provide that the Commission shall ascertain, determine and prescribe what are proper and adequate charges for depre[illegible]tion, which shall be such as will provide the amount required over and above the cost and expense of maintenance to keep the property of the public utility in a state of efficiency corresponding to the progress of the art or industry; the amount so determined to be used for the purpose of renewing, restoring, replacing or substituting depreciated property in order to keep the plant in a state of efficiency.

It has always been one of the perplexing problems of rate making to determine the proper annual allowance, expressed in terms of percentage, for depreciation. This item should be, and is, as capable of exact determination and calculation as is the determination of a proper rate of return. A utility is entitled to earn a fair return upon its investment, as represented by its property used and useful for the convenience of the public, and in addition is entitled to [fol. 447] maintain said property in a state of efficiency corresponding to the progress of the art or industry. To so maintain its property, a utility is permitted to earn a certain fixed sum annually for depreciation in addition to the net rate of return. As this depreciation reserve is earned it should replace deteriorated, obsolete and useless items in the capital account to keep the property in the statutory state of efficiency. Therefore, it has been contended by some that the accumulated depreciation reserve should be deducted from the capital account in determining the rate base; that to handle this item otherwise is to permit the utility to earn twice on substantially the same item. However, this contended for method or practice is not the rule in Ohio, and we are bound by the decision of our Supreme Court in the case of Cincinnati v. Public Utilities Commission 113 O. S. 259 wherein it is declared where there is a reserve depreciation account in excess of the actual depreciation found, such excess cannot be deducted from the present reproductive cost.

An important factor in determining the proper depreciа-

tion allowance, is the maintenance policy of the company under consideration. This company has from time of the merger in 1921 carried on a high standard of maintenance and kept its property in good condition and in a high state of efficiency. The line of demarcation between maintenance charge and depreciation charge is often quite dim and undoubtedly many items properly chargeable to reserve are handled as maintenance expense. Charges that would be considered a major requirement to a smaller utility are merely routine maintenance matter to a utility of the size of the present company.

This commission found at the time of fixing a tentative valuation of the property that the depreciable property of this company was on the date certain in a 87% condition. To maintain that condition the company expended from the time of the merger to the date certain in the way of expenses for current maintenance and repairs the sum of $16,385,139.00 and during the same period the net charges to reserve for depreciation amounted to $11,349,664.00. From the date certain to December 31, 1931 the company paid out in the way of expense for current maintenance and re- [fol. 448] pairs the sum of $42,064,639.00 (a very liberal sum), and its net charges to reserve for depreciation for the same period were $40,956,301.00.

We are especially concerned with the practice of the company in maintaining its property as of the date certain and for the years prior thereto for the reason that the value of the plant as of the date certain is the base upon which the return to the company is computed.

In addition to making the expenditures for maintenance, and net charges to the reserve for depreciation as above mentioned, the company at June 30, 1925, the date certain, had accumulated and carried a depreciation reserve balance of $12,560,502.79 divided as follows—Reserve for Accrued Depreciation $12,330,762.95, and Reserve for Amortization of Intangible Capital $229,739.84. As of December 31, 1932, the company showed in its statement to this Commission a reserve for accrued depreciation and amortization of intangible capital amounting to $20,569,893.70, of which sum approximately $306,000.00 is the reserve for amortization of intangible capital.

The balance in the reserve on the date certain represents past accumulations for depreciation after deducting the ac-

tual retirements from year to year. These accumulations had been made by annual charges to operating expenses, i.e., by annual segregations of the revenues paid by subscribers for service received. Each year's reservation represents the company's estimate of the depreciation of its property in that year in serving subscribers, and the net accumulations in the reserve show what payments by subscribers set aside for this purpose are not yet needed, in the company's judgment, for physical retirement of property. In other words, the balance in the reserve shows the accumulated amount set aside to replace depreciated property in the future which customers have paid for in advance of writing the property out of the property and plant accounts.

There is a definite relation between past accumulations from reserves and proper allowance for the future. In the [fol. 449] case of Smith v. Illinois Bell Telephone Company, 282 U. S. 133, it was held—

"The allowance for depreciation entering into the ascertainment of the rate base of a public utility may be based on past experience, and should not be continued if shown by such experience to be excessive."

"Results shown under comparable conditions by other utility companies similarly situated, together with past experiences of the company in question, should afford a sound basis for judgment as to the amount which should be allowed as an annual charge for depreciation in fixing a rate base."

In the opinion in said case the Court further says—

"While it has been held by this court that property paid for out of moneys received for past services belong to the company, and that the property represented by the credit balance in the reserve for depreciation cannot be used to support the imposition of a confiscatory rate * * * it is evident that past experience is an indication of the company's requirements for the future * * * The experience of the company should afford a sound basis for judgment as to the amount which, in fairness both to the public and private interest, should be allowed as an annual charge for depreciation."

We believe that there is a direct relationship between the condition percent of a public utility property and its history

as to retirements on the one hand, and the allowance that should be made annually for depreciation on the other. As heretofore stated, the property of the company on the date certain was in a 87% condition.

From the books of the company (Wood Exhibits 12-13 and 15) we find that from the date of merger, September 21, 1921, to the date certain, June 30, 1925, the company made net charges to its depreciation and amortization reserves for various types of property, equal to the following average annual rates.

Depreciation—

Telephone Plant and Equipment including Office Furniture and Fixtures	3.74%
General Store Equipment	.19%
General Stable and Garage Equipment	16.78%
General Tools and Implements	4.93%

[fol. 450] Amortization—

Right of Way	2.49%

During the same period the company credited its depreciation reserve with amounts equal to the following average annual rates:

Depreciation—

Telephone Plant and Equipment including Office Furniture and Fixtures	5.50%
General Store Equipment	9.96%
General Stable and Garage Equipment	19.69%
General Tools and Implements	19.79%

Amortization—

Right of Way	4.39%

Charges equal to the above reserve credits were entered in the company's books as follows:

Charged entirely to expenses—

Depreciation of Telephone Plant and Equipment including Office Furniture and Fixtures	5.50%
Amortization of Right of Way	4.39%

Charged partly to Expenses and partly to Fixed Capital, according to use—

Depreciation on General Store Equipment	9.96%
Depreciation on General Stable and Garage Equipment	19.69%
Depreciation on General Tools and Implements	19.79%

Due to the rapidly depreciating nature of the last three classes of property, the apparent fairness of the rates used, and the relatively small portion of the valuation represented thereby, the Commission does not criticize the depreciation shown by the books for these items. Amounts for Amortization of Right of Way must hereafter be entirely disallowed by the Commission in compliance with the ruling of the Ohio Supreme Court in the case of Columbus Gas & Fuel Company v. Public Utilities Commission, 127 O. S. 109.

As the major item of depreciation expense is represented by the amount charged for depreciation on telephone plant [fol. 451] and equipment including office furniture and fixtures, it appears that from the date of merger to the date certain the company annually charged as depreciation expense an average composite rate of 5.50% and that its net charges to reserve for depreciation during the same period was equal to an annual composite rate of 3.74%.

It also appears that the company's charges to expense for depreciation for the years subsequent to the date certain were somewhat higher than for the preceding years, averaging 5.60% to the end of 1931. It also appears from the record and books of the company (Wood Exhibit No. 16) that the company made a reduction in its composite rate for depreciation whcih on December 31, 1931, amounted to 5.8%, to 4.4% as applied July 1, 1932, a net reduction of 1.4% representing a reduction of 24% in its annual rate for depreciation expense, a recognition on the part of the company that the reserve for depreciation was accumulating in excess of the actual needs of the company and condition of its property to keep the property of the utility in a state of efficiency corresponding to the progress of the art or industry. The company gave similar recognition to changing depreciation requirements by revising its depreciation rates as of January 1, 1922, August 1, 1926, and January 1, 1929.

There have been extensive changes in the fixed capital

of the company during the years prior to 1928 as well as the years thereafter due to new construction and retirements of old plant, resulting in the substantial reconstruction of the plant of the company and in the modernization thereof to such an extent as to require comparatively few replacements for some time to come. At the time of the merger, September 21, 1921, the balance in the fixed capital account as shown by the books of the company was $75,269,-253. During the years following that date and including the year 1927 the company increased its fixed capital amount, according to its books, to $128,735,984 of which $95,616,505 represented gross additions, from which it readily appears that new construction and purchases equal in money value the fixed capital at September 21, 1921, was completed some [fol. 452] time during the year 1927. Up to December 31, 1931, the book value of gross additions amounted to $184,-971,637 and gross deductions to $88,419,086, disclosing also that the entire money value of the fixed capital at September 21, 1921 became fully retired some time during the year 1931. The gross deductions at the end of the year 1930 amounted to $74,674,366, being within $600,000 of the entire money value of the fixed capital at September 21, 1921.

A summing up of the foregoing prompts us to conclude that for maintenance of the property in the per cent condition as found by this Commission as of the date certain, the practice of the company demonstrated that a composite rate of 3.74% of the depreciable property expended annually for depreciation was amply sufficient, and considering also the large sums expended by the company for the years prior to and subsequent to the date certain for maintenence and repair, and that the plant has been substantially reconstructed and fully modernized, that in order to allow for annual statutory depreciations both realized and unobserved, a composite rate of 4% of the depreciable property is a fair and just allowance to be made annually for depreciation expense, and it is our conclusion and finding that said rate be fixed and allowed in this case to be computed on the present value of the depreciable property as of the date certain, and for years subsequent to the year 1925 to be computed upon the present value of said property as of the date certain plus net additions to the depreciable property. The value of the depreciable property of the company as of the date certain having been found to be $84,330,894, the amount

to be allowed for depreciation expense for the year 1925 is hereby determined and fixed at $3,373,236. This allowance to be allocated between interstate and intrastate operations per Appendix "F." The respective allowances for depreciation expenses for subsequent years, computed on the basis herein determined, are set forth in Appendix "K" hereto attached.

[fol. 453] Comments on the License Contract

Important issues are raised in the consideration of the license contract existing between the American Telephone & Telegraph Company (licensor) and the Ohio Bell Telephone Company (licensee) by which the former was to furnish to the latter certain appliances and render certain specified services.

The contract in force at the date certain was entered into between the several parties on October 16, 1923. Briefly, it provided that the licensor granted to the licensee, license to use its patented receivers, transmitters and induction coils (telephones) and in addition thereto was obligated to furnish to the Ohio Company certain engineering, financial and advisory services, for all of which benefits the licensee agreed to pay to the licensor 4½% of its total gross earnings payable in monthly installments and computed as provided for in the contract. On January 1, 1926, this percentage was reduced to 4%. Effective January 1, 1928, the license contract was again modified by providing for the sale by the American Company to the Bell Company of the patented articles furnished under the original license contract, the Bell Company assuming the obligation to replace and repair the instruments. The royalty contract was changed so that the Bell Company paid only 2% of the gross revenues thereafter until January 1, 1929, when the payment was further reduced to 1½%.

The fact that the license contract provided for the furnishing of instruments and service at the date certain and was later modified so as to exclude the rental of the instruments and include only the service, makes it necessary to give it a different effect in the several years.

In the Illinois Telephone case the Supreme Court said in substance that specific findings should be made with regard to the cost of the services rendered and instruments furnished by a parent company to an operating telephone com-

pany under a license contract, and as to the reasonable amount which should be allocated to the operating expenses of the intrastate business of the utility in determining whether rates are confiscatory.

[fol. 454] Chief Justice Hughes said—

"In view of the findings, both of the State Commission and of the Court, we see no reason to doubt that valuable services were rendered by the American Company, but there should be specific findings by the statutory court with regard to the cost of these services to the American Company and the reasonable amount which should be allocated in this respect to the operating expenses of the intrastate business of the Illinois Company in the years covered by the decree."

The Findings of the Statutory Court

The Statutory Court in compliance with the instruction of the Supreme Court has made certain findings as to the cost to the parent company of this service as covered by its specific findings 22 to 26 inclusive.

We have carefully studied the opinion of the Statutory Court and the evidence adduced in its support and the evidence adduced by the State in the instant case. We have the highest regard for the findings of this Court and recognize the fact that it had before it the witnesses who testified to various items touching the cost of this service, and we regret that we cannot follow in its determination of the cost to the American Company for services furnished by it under the license contract.

Rental of Instruments

As to the rental of the instruments, we are not in harmony with the Court as to the cost of this service to the American Company especially on the item of 7% depreciation in Ohio. It appears from the evidence that the American Company charged the licensees 7% depreciation as a part of the cost of its service, but when it sold the instruments to the licensees such depreciated value was disregarded and a profit of $14,395,800 was realized for all such instruments so sold. In computing the cost to the American Company for furnishing the instruments we have reduced the revised 6% depreciation made by the company after the Chicago decisions to 3% as amply sufficient to cover this item in view of [fol. 455] the sale price of the property. The $14,395,800

realized as a profit in this sale was placed in the surplus fund of the American Company designated in this case as a reserve for contingencies and asserted to be for the purpose of protecting the licensee companies against patent infringement liability. There is no evidence in the record of any expense being incurred during any year on account of such liability.

The License Agreement

The contract provides that the licensee is entitled to receive from the licensor in addition to all other services and benefits accruing to the licensee, the described services and privileges which may be briefly summarized—

(a) The right to use all telephonic devices covered by patents owned by the licensor and all new improved apparatus in the art of telephony resulting from experimental work under the direction of the licensor, and protection against all suits for infringement.

(b) The continuous prosecution by the licensor of research work in the development of the art and the plans designed to promote economy and efficiency in equipment of the plant of the associated companies.

(c) Advice in engineering, traffic, operating, commercial, accounting, patents, legal, administrative and other matters pertaining to the successful conduct of the telephone business.

(d) Advice and assistance in any financing required to be done by the licensee in the extension of its plant or improvement to its system, and assistance in marketing licensee securities and other necessary financial support.

(e) The right to extend to subscribers of the licensee the connections provided between its system and the system of other associated companies and their subscribers.

[fol. 456] (f) Active assistance in connection with such measures as will best protect the health of employees and in other ways conserve the high quality of service and maintenance by the licensor of various pension and insurance plans.

(g) The right of the licensee to extend to its connecting companies the benefit of the advice and information that the licensee may receive from the licensor.

In order that the services may be promptly performed, the licensor will—

(a) Render available for use of the Bell Company all products of the licensor's research and all inventions, etc., relating to the art of telephony, which, after investigation, are pronounced by the technical experts of the licensor to be of practical use.

(b) Maintain continuously an organization of specialists to relieve the licensee from the necessity of performing such work.

(c) Maintain facilities for connection between the system of the licensee and the system of other associated companies.

The contract provides for full service between the exchange of the licensee and the toll lines of the licensor setting out provisions for payment of interline service.

Field Occupied by the American Telephone & Telegraph Company

It is impossible to determine with any correctness the value and cost of the service rendered by the American Company to its Bell subsidiaries unless we comprehend the wide field occupied by this company.

The American Company owns directly or indirectly more than 90% of the combined voting stock of the 24 companies associated with it as the Bell system, together with the long distance lines which connect the wires of the different companies. The Bell system forms an inter-communicating system of nearly fourteen million telephones with which are connected the lines of nearly seven thousand other companies and more than twenty-six thousand rural lines cov- [fol. 457] ering the entire United States. Service is provided to Canada, Cuba and New Mexico by wires and by radio telephone to most of the countries of Europe, South America, South Africa and the islands of the sea so that 92% of the entire telephones of the world can be reached by the Bell system.

In 1931 the company introduced the use of the teletype writer, a valuable adjunct to the newspaper service.

The company owns 98% of the stock of the Western Electric Company, 50% of the Bell Telephone Laboratories by direct ownership and practically the remaining 50% through its ownership of the Western Electric; all of the stock of the Bell Telephone Securities Company, the Eastern Tele-

phone and Telegraph Company of Canada and 50% of the stock of the Cuban Company.

The Bell Telephone Company of Canada, of which stock the American Company owns 24%, owns and operates toll lines and telephone exchanges in Quebec and Ontario. Through the Cuban Company it owns certain valuable concessions and rights in Cuba and has submarine cables to that island.

Western Electric Company

This company manufactures and distributes telephones and other electrical apparatus mostly to the Bell system. It is also the purchasing agent for that system. Its largest manufacturing plant is at Hawthorne, Illinois, with at least two other important plants. This company formerly conducted foreign business which in 1925 it sold at a large profit. Its present territory now corresponds to that of the Bell system. Upon the sale in 1927 by the Western Electric of its foreign business a cash dividend of $48,000,000.00 was received by the American Company, which was added to the surplus of the company.

Certain other companies, such as the Graybar Electric Company, were organized as fully owned subsidiaries of the Western Electric, but have since been sold.

[fol. 458] The Bell Telephone Laboratories

The American Company and the Western Electric own jointly the Bell Telephone Laboratories, it being nearly all owned by the American Company through its ownership of the stock of the Western Electric. This company took over all the research and development functions formerly performed by the Western Electric.

The inventions of the Telephone Laboratories have contributed to the progress of electrical science outside the strictly telephone field. To make these developments available in such other fields the Electrical Research Products Inc. was organized in 1926, wholly owned by the Western Electric and through it by the American Company. Non-telephone activities were thus given special attention without conflict with the telephone work. Such activities relate to submarine cables, phonographs, talking motion pictures and many other activities.

In 1930 the American Company acquired the Teletype Corporation now operating as a subsidiary of the Western

Electric. The American Company also owns the Bell Securities Company to facilitate transactions in Bell Telephone securities.

Sale of Telephone Instruments

In 1927 the American Company sold to the associated companies the telephone instruments formerly maintained by it and reduced its license fee as heretofore stated.

Other Non-Telephone Operations

The American Company has other contracts with telephone companies and is engaged in the development of the use of telephone wires for broadcasting and has developed short wave transmitting telephone stations for foreign service and for communication with airplanes and with ships at sea. The company through its research activities has secured patents covering inventions of its research laboratories in the field of radio and has recently turned over to the Radio Corporation of America the right to [fol. 459] manufacture and distribute radio equipment utilizing such inventions. It has also been active through its laboratories in the development of the art of television and telephoto and has engaged in many other activities reaching out and developing new sources of profit not connected with telephone business.

The American Company has recently submitted to the tax authorities of the State of Ohio its statement of the service covered by its license contract and has stressed the fact that practically all the information that it gathers through its research laboratories is transmitted to the associated companies within the several states by bulletins, pamphlets and letters, stating specifically that it is not customary for any of its operating force located in New York to visit the fields for actual contact with the operation of the plants within this State. They will, of course, if occasion requires, send men into the field.

The balance sheet of the American Telephone & Telegraph Company for 1925 shows total assets of $1,645,565,373.91 of which only $1,027,448,629.48 is its investment in the stocks of the associated telephone companies, leaving more than $600,000,000.00 as representing other assets than

its interest in the associated operating companies, or approximately 62% of its assets represented by its holdings in its associate Bell companies and 38% representing other assets.

License Contract Costs

The business of The American Telephone and Telegraph Company is carried on by thirteen separate and distinct departments. One department known as the Long Lines Department is not claimed to have rendered any service under the license contract and hence has no part in this proceeding. The remaining twelve departments, each of which the Ohio Bell Company claims to have rendered service of benefit to it under the license contract, are the following: (1) Operation and Engineering; (2) Development and Research; (3) Information; (4) Personnel; (5) Public Rela- [fol. 460] tions; (6) Treasurer; (7) Comptroller; (8) Secretary; (9) Administration (Incl. Sundry Items); (10) General Service Bureau; (11) Department of Operation—C (General) and (12) Legal.

Each of these twelve departments kept separate record and account of its own expenditures and the purpose thereof, but no attempt has at any time been made to designate what portion of the annual expenditures was strictly license contract expenditure and what was not, and it devolved upon the officers and witnesses for the company to separate such expenditures between license contract expenditures and non-license contract expenditures for the purpose of this case according to their judgment.

While numerous court decisions have in the past sustained license contract payments to the American Company in the sums fixed by the contract as proper operating expenses of the Associate companies, those decisions must be considered in the light of the recent decision of the Supreme Court in the Illinois Telephone Company case heretofore cited, and it is our conclusion that said court in its decision intends that the payments by the telephone company to the American Company for license contract services be restricted to the actual cost to the American Company of benefits conferred upon the operating company or to the amount charged therefor whichever is the lower. This requires us to ascertain the actual cost and the nature and character of the services rendered, and allow as operating expenses only for such services as are essential and bene-

ficial to the Ohio Bell Telephone Company in the operation of the utility. The rate payer is not required to pay for something which is not of actual service or benefit to the utility in rendering its service to the public. We, therefore, feel constrained to inquire into the various items of expenditure of the operating company under the license contract. We have disallowed many of the items, as will hereinafter appear, either because the scope of the work and service were in the interest of and for the sole benefit of the holding company rather than for the licensee company, or that the particular service of the American Company was not rendered for the Ohio Bell Telephone Company [fol. 461] even though such service may have been of service or benefit to other companies of the Bell System or other affiliates of the A. T. T. Co.

The Company has submitted as part of its evidence what it claims to have been the cost to the American Company of rendering license contract service by each of the twelve departments for the respective years 1925 to 1931 inclusive. The figures for the respective years so claimed by the company are shown upon Appendix "J" hereto attached. The Company then in turn allocated said operating expenses to the Ohio Bell Telephone Company as is shown in said Appendix "J."

(1) Department of Operation and Engineering:

The functions of this department consist entirely of rendering service to the operating telephone units of the Bell System. The State admits these services are of value to the Bell Company and concedes the entire claim of the company. We are disposed to and do allow the amounts as claimed in full.

(2) Department of Development and Research.

It is claimed by the company that this department conducts fundamental research in the field of electrical communication to the end of producing improved instrumentalities for giving communication service; and that it is the further function of this department to prepare the fundamental requirements for the installation, operation and maintenance of new equipment.

The State admits that this department does much to benefit the associated companies, but we are of the opinion that

numerous expenses and costs claimed are not related to Ohio Bell Telephone operations and do not constitute a proper charge under the license contract. This appears self evident from the nature of the service for which the expenditures are made. We are disposed to and do eliminate and disallow all costs and expenses incident to the following services and items: picture transmission, television, radio and submarine cable telephone connecting equipment and circuits, radio transmission systems, vacuum tubes, photo electric cells and submarine cables. These items and [fol. 462] amounts charged for each, appear in Exhibit A-118-B. The amounts disallowed for the year 1925 and subsequent years to 1931 inclusive are set forth in Appendix "I" hereto attached.

The remainder of the costs claimed by the company in the Department of Development and Research will be allowed as proper license contract expenses.

(3) Information Department:

It is the claim of the Company that the Information Department advises the associate companies with respect to their own publicity and that it conducts general publicity in their interest, and that the expenses of the Department are for advertising space, payment for printed matter, booklets, etc., salaries and incidental expenses and that by far the greater part of the expense of this department is for advertising. It appears to us that this advertising does not relate to the Ohio Bell Telephone Company as such; that much of it relates solely to the A. T. & T. Co., some to the Western Electric and to the Bell Telephone Laboratories work. Considering also that the Ohio Bell Company pays its advertising bills as a part of its general operating expenses, we do not consider that the general advertising of the A. T. & T. Co., national in scope, should be paid by the Ohio rate payer and therefor we disallow all of the costs claimed for the Information Department.

(4) Personnel Department:

It appears to us that the scope of the work of this Department is rather in the interest of the holding company than that of the licensee and the cost thereof not proper charges against the rate payer of the operating company, but considering that the State has admitted the propriety

of some of the items and objected to others, we are disposed to adopt the State's figures and disallow those items set forth by the State in Appendix D of its brief consisting of the following: special training A. T. & T. Co. employees, [fol. 463] "other" items shown in Column 4 Exhibit A-150-B, Public Relations, "other" items shown in Column 4 Exhibit A-151-B and interest on employees' benefit fund, Exhibit Heiss No. 10, Supl.

The items so disallowed for the years 1925 to 1931 inclusive are set forth in Appendix "I" hereto attached. The remaining items of cost in the Personnel Department will be allowed as claimed.

(5) Public Relations Department:

Mr. Heiss, witness for the Company, testified:

"The Department of Public Relations represents companies of the system before the federal government, also in work with national trade and industrial organizations. This representation is given both on matters which are of general interest to companies and on matters which, while affecting only some particular company, may sooner or later benefit others."

There is no evidence that any work of this Department was specifically rendered or of service to the Ohio Bell Telephone Company and we do not believe that any part of the cost of this Department should be paid by the Ohio rate payer and therefore the total amount claimed for the Public Relations Department is disallowed.

(6) Treasurer's Department:

It is claimed by the company that the function of this Department is the custody of the cash and securities of the company; receiving and disbursing its funds including the payment of payrolls and expenses; the making of advances to the associate companies; investing the surplus cash on hand in short time securities; to issue, transfer and register the securities of the company including the issue to the employees of stock under the employees' stock plan, and conduct financial research and to develop methods for improving practices in its own office and in the offices of the associate companies' treasurers; in personal con-

sultations and correspondence with the treasurers of the associate companies and their offices on specific question. [fol. 464] The costs of this department are divided into six groups as follows:

1. Cost of handling new security issues.
2. Cost of servicing outstanding securities of the A. T. & T. Co.
3. Cost of handling and making advances sought by associated companies.
4. Cost of financing general department of A. T. & T. Company.
5. Cost of handling employees stock plan.
6. Cost of advising associated company and long lines in their treasury work.

It appears to us that the cost of these various groups of this Department, with the possible exception of group 6, are entirely for the benefit of the A. T. & T. Company and not proper charges against the operating company and we therefore disallow all items charged for under the following items: direct distribution of securities, servicing securities, handling funds and making advances, financing general department and handling employees' stock plan, all as appear in Exhibit III, N. R. 861-864-863 and 862. These various items are set forth in detail in Appendix "I" attached hereto. The balance of the cost claimed by the Company in said Department will be allowed.

(7) Comptroller's Department:

This department deals largely with statistics, general books and records and reports and we are inclined to the view that these activities are rather those pertaining to the holding company than to the operating companies. However, the State concedes the propriety of some of the charges as proper items of expense and we therefore adopt the State's position in allowing part and disallowing other items. The figures disallowed are those set forth in Appendix D of the State's brief consisting of the cost pertaining to the following functions of that department: general books and records, chief statistician, Bell system reports, and proportion of subheads "undistributed" and "administration" appearing in Exhibit A-155-B. The items so disallowed are shown on Appendix "I" hereto attached. All

other items included in said Department costs consisting of [fol. 465] Bell system methods, chief traveling auditor, chief accountant and proportion of sub-heads "undistributed" and "administration" are allowed. The items so allowed for the respective years appear in Appendix "H" hereto attached.

(8) Secretary's Department:

The duties of this Department have been testified to as consisting of the usual duties performed by any high type secretary.

It appears clear to us that the expenses of this Department should not be paid by the rate payer for the reason that the services are solely for the benefit of the holding company and not for the operating company and therefore all costs claimed for this Department will be disallowed.

(9 and 10) Administration Department and General Service Bureau:

The costs of the Administration Department pertain to the general administrative officers and of their assistants of the American Company, and the function of the General Service Bureau is to perform the work of the Company more or less common to all the departments where it is considered that the work may be handled more advantageously by a central organization.

It is claimed that if the General Service Bureau did not exist, the work performed by it for the various departments would have to be performed by each department separately and therefore add to the cost of service of other departments. It is also claimed that the general officers supervise the activities of the various departments and that therefore the cost of the Administration Department might be logically spread among the different departments of the American Company and thereby add to the cost of the license service rendered to the operating company.

We recognize the force of these contentions and consider that part of the costs of the Administration Department and General Service Bureau should be borne by the operating company, but we are not disposed to allow the full [fol. 466] amount claimed for the reason that we have not allowed the costs of operation of a number of the departments, and reduced the amount allowed in other depart-

ments. Therefore it would be unfair to allow all of the costs of these two departments. It is our conclusion that a proper amount to be allowed, in the absence of testimony to the contrary, is just one-half of the amount claimed by the company as the costs incident to the Administration Department and General Service Bureau. The amounts so allowed (and disallowed) for the various years 1925 to 1931 inclusive, appear in Appendix "H" hereto attached.

(11) Department of Operation—C (General):

This Department is said to furnish the associated companies with advice in matters pertaining to negotiations of purchases and sales of operating properties.

From the testimony of Mr. Heiss on this subject we are satisfied that these expenses are primarily for and directly intended to benefit the Western Electric Company and the American Company as a holding Company. For that reason we have decided to disallow all costs of this department.

(12) Legal Department:

We are not disposed to question the propriety of these costs and therefore have decided to allow the full amount claimed for this department, and shown on Appendix "H" hereto attached.

It might also be noted that the State at no time contradicted any of the items of expense of said departments, nor questioned the methods or ratios used or the amounts allocated to the Ohio Bell Company or to its intrastate business as presented by the company, nor did the State offer or advocate any other allocation of any of the items of expense. The objections on the part of the State, where made, were to the relevancy of the cost of items of expense for services not essential nor beneficial to the operations of the Ohio Bell Company.

[fol. 467] Allowances and Disallowances of Departmental Costs and Expenses

Summing up what has been said pertaining to the twelve departments aforesaid and in order to set forth the specific amounts allowed and disallowed there is attached hereto Appendix "H" to which reference is had to ascertain the total departmental expenses allowed for the years 1925 to

1931 inclusive, and appearing upon the same appendix is a table of departmental expenses disallowed.

Office Space and Furniture Expense

The A. T. & T. Company also provided office space and office furniture and fixtures to its said twelve departments and it asks compensation therefor from the operating company as part of the costs of operation of said twelve departments. (Exhibit A-167-B). We consider a part of this expense to be justified, but are disposed to allow but one-half thereof for the same reasons that but one-half of the costs of the Department of Administration and General Service Bureau were allowed as heretofore stated in this opinion and finding. The amounts so allowed are as follows: 1925, $3,157.00; 1926, $731.00; 1927, $837.00; 1928, $912.00; 1929, $974.00; 1930, $1,015.00 and 1931, $1,078.00—Entered on Appendix "G."

Instrument Expenses

The American Company during the years 1925 to 1927 inclusive incurred cost for maintaining the receivers, transmitters and induction coils (telephones) furnished to the Ohio Bell under the license agreement. This maintenance expense as shown in Exhibit A-162-B was $61,291 for the year 1925; $81,311 for the year 1926 and $86,754 for the year 1927. No question has been raised as to the accuracy of these figures and the Commission finds the same to be reasonable and allows the sums mentioned as part of the operating expenses for the respective years mentioned.

We conclude and find for the reasons already mentioned that the reasonable amount of cost of the expense of depre- [fol. 468] ciation is represented by an annual depreciation rate of 3% applied to the cost of such instruments, and that such reasonable amounts are found to be as follows: for the year 1925, $51,793; for 1926, $56,506 and for the year 1927, $58,882.

The American Company is also entitled to charge as a cost of furnishing such receivers, transmitters and induction coils (telephones) under the license agreement an annual return of 6% of the reasonable value of such instruments. This 6% computed on the average current cost less accrued depreciation as shown on line 3 Exhibit A-163-B and hereby allowed is as follows: for the year 1925, $95,300;

for the year 1926, $103,970, and for the year 1927, $108,343. All allowances under this heading appear on Appendix "G."

Patent Infringement Expenses

The license agreement also provides that the licensee is entitled to receive from the licensor services in relation to patented and improved devices, and immunity from loss by reason of infringements.

The possibility of infringement damage is too remote to charge the rate payer for a cost or expense which does not exist and not likely to arise when we consider that during all the years from 1925 to the present time there has been no cost to the American Company in the way of loss or damages because of patent infringements of apparatus used by the patrons of the Ohio Bell Company.

We consider that having allowed all of the legal expenses claimed for by the American Company that whatever services may have been rendered in the way of defending infringement cases have been fully compensated in the allowance of legal services already mentioned. For said reasons no amount is allowed as operating expenses under said license contract for alleged patent infringement by way of losses, damages or otherwise, except as already noted in the way of legal expense.

[fol. 469] Taxes and Costs Incurred in Holding Funds Available

The American Company during the years herein under consideration paid a large amount annually in the way of taxes and also, during the same years, held millions of dollars available so that it might, as claimed by it, respond instantly to demands for sums by any of the associate companies.

The Illinois Statutory Court reached the conclusion that the cost to the American Company of holding funds available to meet current cash requirements of the associate companies, as well as taxes paid by the American Company, are not costs and expenses covered by the contract and should not be included under the allowances for operating expenses. This Commission has come to the same conclusion and disallows any and all claims of said items of cost as a part of the operating expenses of the Ohio Bell Company.

License Contract Costs for 1932 and 1933

No evidence has been offered of the costs to the American Company for services to the Ohio Bell Company under the License Contract for the years 1932 and 1933 and we are disposed to allow as expense for allowable services for said years the same amount as allowed for the year 1931 or the amount actually paid by the Ohio Bell Company for the years 1932 and 1933 whichever is the lower. The amount therefore to be allowed for 1932 is $521,084. It appears from the record that the Ohio Bell Company paid to the American Company for its services under the contract for the year 1933 the sum of $466,923. Said sum being lower than the amount allowed for the year 1931, we allow the amount as actually paid for that year. The various sums here allowed are set forth in Appendix "G" hereto attached.

[fol. 470] Total Expenses and Deductions

A summary of expenses and deducted allowance are shown on Appendix "F."

Rate of Return

The Company is entitled to a fair and reasonable return on the value of the property used and useful in the rendition of the service to the public. The Supreme Court of the United States upon numerous occasions has spoken on fair rate of return to a public utility, and while it is not necessary to enter upon an extended review of said decisions, we choose to refer to a few of them which aid us in arriving at a proper determination of what is a fair and reasonable return in this case.

It was said by the court in the case of Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255:

"A rule as to rate of return cannot be laid down which would apply uniformly to all sorts of utilities; what may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk."

A 7% rate was found adequate in this case.

And again, in the case of Willcox v. Consolidated Gas Company, 212 U. S., 19, 53 L. Ed., 382 the court said:

"There is no particular rate of compensation which must, in all cases, and in all parts of the country, be regarded as

sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where the business is conducted, and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. * * * The less risk, the less right to any unusual returns upon the investments."

A 6% rate of return was approved in this case.

The court in the case of McCardle v. Indianapolis Water Company, 272 U. S., 400, 71 L. Ed., 316, found a 7% rate necessary to be adequate, and in the case of Des Moines Gas Company v. Des Moines, 238 U. S., 153, 59 L. Ed., 1244, [fol. 471] and Cedar Rapids Gas Light Company v. Cedar Rapids, 223 U. S., 655, 56 L. Ed., 594, it approved a 6% rate of return.

A much cited case is that of Bluefield Water Works and Improvement Company v. West Virginia Public Service Commission, 262 U. S., 679, 67 L. Ed., 1176. The court said:

"What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertaking which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

In Dayton-Goose Creek R. Co. v. United States, 263 U. S., 456, 69 L. Ed., 388, we find the following expression:

"By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit."

The Supreme Court in United Railways & Electric Company v. West, 280 U. S., 234, 74 L. Ed., 390, decided that a rate of return of less than 7.44% was confiscatory and indicated that under some conditions an 8% rate would be no more than necessary. That court at a later date upheld a 7% rate of return for an electric power company. Wabash Valley Electric Co. v. Young, 287 U. S., 488, 77 L. Ed.—

In the recent Chicago case, many times heretofore referred to, the Statutory Court fixed a rate of return ranging from 7½% beginning in 1923 to 5½% for the year 1932. [fol. 472] The Company here under consideration enjoys a virtual monopoly in the territory in which it operates; its business constitutes one of the most substantial and profitable utility businesses in the State; its properties are favorably located in serving many of the large and thriving communities of Ohio; its management is of a high grade of efficiency; its financial position, because of its subsidiary character, is of a very high order, and it has been able by reason thereof to secure funds for its additions and betterments without going into the open market for money and there is no indication that it will be required to enter the public market for finances in the immediate future. It may be said the element of risk to the investor as applied to this company is negligible.

In the Chicago case the court announced that a public utility enjoying the advantages of the Illinois Bell Company is not entitled to the large earnings made by many undertakings during periods of great prosperity, and, on the other hand, its return in times of business adversity should not be reduced to the extent that many private corporations have been impaired.

While a higher rate of return might be proper for the early years under consideration in this proceeding, the present business conditions, generally, do not make unfair or confiscatory a low rate of return to a long established and permanent business such as that of the Ohio Bell Telephone Company.

Considering all matters herein referred to, this Commission is of the opinion and so finds the fair rate of return on the average fair value of the Company's intrastate property to be 7% for each of the years 1925 to 1929 inclusive, 6½% for each of the years 1930 and 1931 and 5½% for each of the years 1932 and 1933.

Applying the net operating income found by this Commission to have been received by the Company for the years 1925 to 1933 inclusive to the rate base found by the Commission, we find the Company received on its intrastate business the following rates of return, namely: 1925, 8.95%; 1926, 9.01%; 1927, 8.79%; 1928, 8.57%; 1929, 8.09%; 1930, 7.52%; 1931, 7.64%; 1932, 6.18%; 1933, [fol. 473] 5.51%. This return is in excess of a fair return under conditions existing during the years mentioned.

Applying the rate of return as herein found to be fair and reasonable to the rate base applicable to the intrastate business for the respective years we find that the Company was entitled to earn as its net income the following sums: for the year 1925, $6,559,524; 1926, $7,123,744; 1927, $7,772,557; 1928, $8,569,241; 1929, $9,433,590; 1930, $9,469,398; 1931, $9,442,658; 1932, $7,349,411; 1933, $6,959,232.

We therefore further find that the Company collected and received on its intrastate business an excess net income for said years, as follows: 1925, $1,822,647; 1926, $2,041,483; 1927, $1,986,610; 1928, $1,925,301; 1929, $1,463,347; 1930, $1,481,689; 1931, $1,659,760; 1932, $908,335, a total for said years of $13,289,172. There appears to have been no excess net income for the year 1933. See Appendix "M" for detail figures.

The Commission in the company-wide case fixed June 30, 1925 as the date certain for the valuation of the property. Many Pence Law cases were begun prior to that date, some as much as two years. The Commission has fixed the value of the property and found an excess rate as of that date, and has no complete evidence upon which it may determine the amount of excess payment if any, that may have been made prior to June 30, 1925. This fact may require further investigation as to possible excessive returns in the Pence Law cases between the date of their inception prior to June 30, 1925, and June 30, 1925, the date certain in the company-wide case.

It is, therefore, the finding of this Commission that the rates, charges and schedules of the Company for services rendered, existing on the date certain and subsequently charged and collected, are unjust and unreasonable and that the Company be required to submit new schedules setting forth rates and charges as of the date certain, giving first consideration to a proper reduction of the increased rates so charged and collected, which shall pro-
[fol. 474] duce to the Company net income not in excess of that herein found to be fair and reasonable as of June 30, 1925 in order that the Commission may fix and determine the just and reasonable rates and charges as of said date.

It is the further finding of this Commission that of the excess net income collected by the company, as herein found, there be repayment by the Company in manner provided by law, to the customers entitled thereto.

Orders will be entered in harmony with the findings contained in this opinion.

The Public Utilities Commission of Ohio, by Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 16th day of January, 1934.

[fol. 475] Dissenting Opinion

I am obliged to dissent from the majority findings in this case, for the following reasons:

1. The State protested against the tentative fair value (as of June 30, 1925) on the ground that it was too high; the company protested on the ground that it was too low. Both Sloan's and Williams' appraisals (for the company) as of that date were in excess of $140,000,000. State's witness Hagenah's appraisal, omitting certain items, was approximately $113,000,000. The total tentative value as found by the Commission was $104,282,735, which was even less than the actual book cost of the property. It is my judgment the tentative value was unquestionably too low, and should have been increased substantially in the final valuation, witness the fact that in the recent case of Illinois Bell Telephone Company v. Gilbert, et al., 3 Fed. Supp. 595 (the so-called Chicago case), the fair value of similar telephone property as of June 30, 1925, was found by the three-judge Federal Court to be more than 20% higher than its book cost.

2. Instead of increasing the total tentative value, which was lower than the book cost of the property as heretofore stated, the majority findings, without any change in the pertinent evidence have cut the further sum of $7,860,459 from the tentative value, thereby reducing the final value to a point far below the actual cost of the property, as of June 30, 1925. In my own mind that cannot be justified; nor is it clear how one of the now concurring Commissioners who in 1931 found the tentative value as of June 30, 1925, to be more than $104,000,000 can now find the value of the same property, as of the same date, to be approximately $96,000,000.

3. For similar reasons the majority findings of fair value for the succeeding years, which start with the low final value as of June 30, 1925, and are for each year much less than even the book cost of the property, are, in my judgment, too low and therefore unfair.

[fol. 476] 4. By the application of so-called cost trends, the majority findings have still further reduced the value of the property for the years subsequent to June 30, 1925. These cost trends applied in the majority findings do not reflect telephone construction costs. They were derived from trade magazines and other publications not in evidence, and as to which the telephone company has had no opportunity to be heard. Moreover, costs are again on the increase, in fact one of the results of the Government's program is to bring about increases in labor and material prices, and consequently an increase in construction costs. I cannot see that the majority findings have taken that fact into consideration. See McCardle v. Indianapolis Water Company, 272 U. S. 400.

5. In reducing the tentative value of the right of way from $1,568,281 to $1,243,034, the majority findings have deviated from the unbroken practice of the Commission in previous cases; have rejected the evidence of the State's witness, Hagenah, and disregarded the decision by the Federal Court of this District in the recent case of Ohio Associated Telephone Co. v. Commission, where the court expressly declined to limit the value of the right of way to the amount shown on the company's books.

6. Based on all of the evidence, as I read it, including that of State's witness, Hagenah, the percent condition of the

property as of June 30, 1925, should have been 90% instead of 87%, and for the succeeding years should have been in excess of 90%, due in part to the addition of more than $160,000,000 of new property subsequent to June 30, 1925.

7. The reduction in the percentage allowance for undistributed construction costs or general overheads from 17.25% in the tentative value to 15% in the final value, without any change in the evidence, and the use of 15% for that purpose for the succeeding years is not justified. State's witness, Hagenah, himself testified to 17.25%. In reality the majority findings have not even allowed 15% for general overheads, having omitted any allowance for engineering in the case of many major items of plant. Also, by [fol. 477] applying the less-than-15% to a much lower property value than the 17.25% was applied to, the majority findings have still further reduced the amount found for overheads in the tentative value.

8. The reduction of the amount for working capital from $3,500,000 in the tentative value to $2,948,502 in the final value, without any change in the evidence, is equally unjustified. Even the amount of $3,500,000 found by the Commission in the tentative value (and now reduced by $551,498) was less in percentage than the allowance for this item in any other telephone case decided by the Commission of which I have knowledge.

9. In the matter of Construction Work in Progress, for which no amount has been allowed in the majority findings, a utility is compelled to provide the money with which to pay for plant in process of construction. In Ohio it is taxed upon that plant as any other property. There is no sensible reason why it should have been excluded from the rate base. It was included in the rate base in the Chicago case and has been likewise included in many previous cases.

10. Under the evidence in this particular case a separate finding for going concern value was not only proper but necessary. The percentage allowance for that item in the tentative value was lower than in any case of which I have knowledge. Instead of increasing the tentative value allowance, the result of the majority findings is to now reject the item entirely. Certainly I cannot concur in that. In the

Chicago case the allowance for going concern value was 8%. In the Columbus Gas and Fuel case (17 Fed. 2nd 630) his honor Judge Hough added 10% for the going concern value, and there are many other cases wherein the amount ranges from 10 to 15%.

11. In general, I am of the opinion that the fair value of the property, both interstate and intrastate, for each year of the period is substantially in excess of its book cost, except toward the end of the period, when it approximates book cost.

[fol. 478] 12. By reducing the annual expense of depreciation below that actually set aside by the company for that purpose each year, the majority findings disregard all of the pertinent evidence in the case. The correctness of the company's rates of depreciation was not questioned. No witness testified that the Company's rates were too high or claimed that the reserve was excessive for any year. In point of fact, as of June 30, 1925, the amount in the reserve, $12,560,503, was less than enough to provide for the existing depreciation found by the Commission. For that year the percentage of reserve to plant was only 12.75%, and for each of the other years it was even less than that. If, for the period, the company had provided for its depreciation reserve at the 4% rate applied to the property value, by the majority findings, I am satisfied that the balance in the reserve for depreciation as of present time would be less than $5,000,000—an absurd amount, particularly in view of the size of the respondent's property.

13. In my opinion the reduction of the majority findings in the allowable license contract payments below those found to be proper by the Federal Court in the Chicago case is not justified, the evidence in that case and in the present case on that issue being substantially the same, and the decision of that court being necessarily entitled to great weight.

14. I am unable to conclude that for any one of the years in controversy the rate of return on the fair value of the property under the rates collected has been excessive, unjust or unreasonable. On the contrary, in my opinion, on any reasonable basis of fair value of the property for the years, and after making proper adjustments in the revenues

and expenses, the rates collected have provided only a reasonable return on the fair value of the property used and useful in the service and convenience of the public for the years in question.

In a recent case decided by the Supreme Court of the United States, January 6, 1930, United Railways v. West, 280 U. S. 234, the Court said:

[fol. 479] "• • • It is manifest that just compensation for a utility, requiring for efficient public service skillful and prudent management as well as use of the plant, and whose rates are subject to public regulation, is more than current interest on mere investment. Sound business management requires that after paying all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, there should still remain something to be passed to the surplus account; and a rate of return which does not admit of that being done is not sufficient to assure confidence in the financial soundness of the utility to maintain its credit and enable it to raise money necessary for the proper discharge of its public duties. In this view of the matter, a return of 6.26 per cent is clearly inadequate. In the light of recent decisions of this court and other Federal decisions, it is not certain that rates securing a return of 7½ per cent or even 8 per cent on the value of the property would not be necessary to avoid confiscation. • • •"

In citing from the foregoing case I do not necessarily advocate an 8% return as the fair rate of return for the utility at the present time. The point here and the one I wish to emphasize is that for no part of the period in controversy in the present case have the majority findings allowed a return of even as much as 7½% on the property.

See also Section 614-46 of the General Code of Ohio which, in substance, provides:

"If the Commission • • • shall be of the opinion that the rate • • •, so fixed by ordinance is or will be unjust or unreasonable, or insufficient to yield reasonable compensation for the service, the commission shall, with due regard to the value of all the property of the public utility, actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to

own * * * and exclusive of any value thereto by reason of a monopoly or merger *and to the necessity of making reservations from the income for surplus, depreciation and contingencies, and such other matters as may be proper, according to the fact in each case,* fix and determine the just and reasonable rate * * * collected by such public utility."

See Indiana Bell Telephone Co. v. Commission, 300 Fed. 190; Pac. Telephone & Telegraph Co. v. Whitcomb, 12 Fed. 2nd, 279; Northwestern Bell Telephone Co. v. Commission, 6 Fed. 2nd, 663.

[fol. 480] 15. In my opinion, the majority findings, in determining that a portion of the moneys represented by the rates collected by the Company under bond should be repaid, without having first accorded the Company an opportunity to offer separate evidence of property value, revenues and expenses and return for the exchanges with respect to which refunders are to be made, is illegal and contrary to the opinion of the attorney for the Commission recently rendered at the Commission's request. The telephone company has frequently insisted upon its right to offer such evidence and that right has been preserved to it in the record. This right has not been waived.

16. The confiscatory character of the majority findings is perhaps best shown by the fact that notwithstanding the tentative value of the property as of June 30, 1925, was $104,282,735, and notwithstanding since that date the company has admittedly expended more than $160,000,000 for new property, the total present value of all of the property as of November 30, 1933, is now fixed in the majority findings at only $126,000,000. This would mean that as of November 30, 1933, the Company had retired all of the $104,282,735, plus $34,000,000 of the $160,000,000—which is contrary to all of the evidence in the case.

To the foregoing grounds of dissent many others might be added, such, for example, as the disallowances of any amount for engineering on certain items of plant, the exclusion of other items of plant from the amount upon which the allowance for omissions is computed, etc., all contrary to the established practice of this Commission in previous telephone rate cases. Under the circumstances, however,

it is unnecessary to comment on these items in detail, the other grounds hereinabove set forth being more than sufficient, in my judgment, to show that the majority findings do not comply with the decisions of the United States Supreme Court and other Federal Courts. See Bluefield, etc., v. P. U. C. of W. Va., 262 U. S. 679, and Southwestern Bell Telephone Company v. Ft. Smith, 294 Fed. 102 (Affd. 270 U. S. 627).

[fol. 481] Conclusion

I cannot, therefore, concur with my colleagues and their findings in this important case. To do so would require me to disregard the law and to find contrary to the evidence in the case and this I am unwilling to, and cannot, do.

Dated at Columbus, Ohio, this 16th day of January, 1934.

E. J. Hopple, Chairman. Counsel: Karl E. Burr, William H. Thompson, Attorneys for The Ohio Bell Telephone Company. Thomas J. Herbert, Special Counsel for State. Former Special Counsel for State: W. S. McConnaughey, Fred W. Postle, Albert M. Calland. Attorney General: John W. Bricker. Former Attornies General: C. C. Crabbe, Edw. C. Turner, Gilbert H. Bettman. Akron, G. H. Doolittle, R. A. Hershey, C. B. MacDonald, A. B. Underwood; Barberton, A. B. Castleberry; Bellaire, John Lavelle, Esther F. Pinsky; Canton, Russell H. Mack; Cleveland, H. S. Brainard, Harold H. Burton, W. George Kerr; Columbus, J. L. Davies; Coshocton, Carl M. Patterson; [fol. 482] Dayton, J. B. Harshman, H. S. Beane; East Liverpool, G. J. Clarks; Fremont, R. A. Huntsinger; Girard, Edward Rees; Ironton, F. A. Ross; Kent, S. P. Harbourt; Lancaster, Esther H. Brocker, E. A. Silbaugh; London, James F. Bell; Marietta, T. B. Summers; Martins Ferry, Thomas J. Joseph; Massillon, E. D. Graybill, W. W. Wendling; Middletown, Henderson Estes; Mingo Junction, L. M. Sedgwick; Niles, P. Z. Hodge, S. P. Mango; Osborn, Morris B. Rice; Piqua, B. S. Keyt; Salem, Cecil Scott; Sandusky, C. E. Moyer, Springfield, M. E. Spencer; Strongsville, Edward Blyphin; Steubenville, Amanda Z. Strayer, Carl A. Weinman; Toledo, S. Z. Caffin, J. I. Connor,

M. S. Dodd, D. J. O'Rourke; Urbana, Edwin L. English; Upper Sandusky, F. J. Stalter; Washington C. H., A. N. Browning; Xenia, W. A. Miller; Youngstown, Carl Armstrong, H. H. Wickham; Zanesville, P. F. Thompson, City Solicitors and Directors of Law.

APPENDIX A

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

SUMMARY OF FINAL VALUATION AS OF JUNE 30, 1925

Line No.	Acct. No.	Description	Reproduction Value	Percent Condition	Present Value
1.	207	Right of way	$1,243,084	100.00	$1,243,084
2.	211	Land	3,256,854	100.00	3,256,854
3.	212	Buildings	7,788,774	90.18	7,039,936
4.		Total Land and Buildings	$11,045,628	Ave. 93.08	$10,290,778
5.	221	Central Office Telephone Equipment	17,199,740	85.73	14,748,777
6.	222	Other Equipment of Central Offices	634,689	84.73	537,709
7.		Total Central Office Equipment	$17,834,429	Ave. 85.71	$15,286,486
8.	231	Station Apparatus	5,759,956	85.68	4,935,096
9.	232	Station Installations	2,034,425	80.00	1,627,536
10.	233	Interior Block Wires	83,881	80.00	67,105
11.	234	Private Branch Exchanges	3,384,995	85.75	2,902,623
12.	235	Booths and Special Fittings	167,201	80.00	133,761
13.		Total Station Equipment	$11,430,456	Ave. 84.56	$9,666,123
14.	241	Exchange Pole Lines	9,412,432	72.98	6,864,844
15.	242	Exchange Aerial Cable	8,055,194	87.71	7,064,968
16.	243	Exchange Aerial Wire	4,556,220	76.72	3,495,353
17.	244	Exchange Underground Conduit	9,266,082	95.00	8,916,780
18.	245	Exchange Underground Cable	9,810,730	91.85	9,011,068
19.	246	Exchange Submarine Cable	19,730	95.00	18,744
20.		Total Exchange Lines	$41,240,388	Ave. 85.77	$35,371,706
21.	251	Toll Pole Lines	6,108,489	80.98	4,948,825
22.	252	Toll Aerial Cable	536,254	91.50	490,692
23.	253	Toll Aerial Wire	3,842,664	91.78	3,526,696
24.	254	Toll Underground Conduit	30,498	95.00	28,968
25.	255	Toll Underground Cable	421,257	91.64	386,088
26.	256	Toll Submarine Cable	12,653	95.00	12,019
27.		Total Toll Lines	$10,951,809	Ave. 85.72	$9,387,788
28.	261	Office Furniture and Fixtures	634,244	85.00	539,107
29.	263	General Store Equipment	18,181	85.00	15,454
30.	264	General Stable and Garage Equipment	652,331	75.00	489,248
31.	265	General Tools and Implements	422,051	70.00	295,436
32.		Total General Equipment	$1,716,807	Ave. 77.51	$1,330,745
33.		Total Physical Property	$95,462,501	Ave. 86.49	$82,536,604
		Undistributed Construction Expenditures:			
34.		Omissions 1%	814,570	Ave 85.53	697,130
35.		Interest During Construction 6%	5,727,750	" 86.49	4,953,996
36.		Engineering 5%	3,243,948	" 85.67	2,779,054
37.		Taxes During Construction 1%	954,625	" 86.49	825,668
38.		General Expenses 2%	1,909,250	" 86.49	1,651,362
39.		Total Undistributed Construction Expenditures	$12,650,143	Ave. 86.22	$10,907,170
40.		Total Fixed Capital	$108,112,644	Ave. 86.46	$93,473,774
41.		Working Capital Including Materials & Supplies	2,948,502	100.00	2,948,502
42.		Total Property Used and Useful	$111,061,146	Ave. 86.62	$96,422,276
43.		Less,— Interstate Proportion of Total 2.81553%	3,126,949	" 86.62	2,714,788
44.		Intrastate Property Used and Useful 97.18448%	$107,934,197	Ave. 86.62	$93,707,488

APPENDIX B

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3387

VALUATION OF PROPERTY USED AND USEFUL FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE AND TRENDS OF SUCH VALUATION.

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Fixed Capital										
All Items Except Right of Way and Restored Land Values—										
1. Final Valuation Fixed by Commission	$92,118,867									
2. Trended Value First of Period—Percent of Line 8.	.....	100.00% A	98.73% B	96.97% C	99.20% D	101.45% E	95.65% F	98.95% G	88.71% H	102.96% I
3. Trended Value First of Period—Amount	.....	$92,118,867	$96,811,536	$100,642,148	$116,752,189	$129,560,975	$137,815,645	$142,205,570	$129,465,177	$130,562,030
4. Net Additions During Period—Per Books at 100%	.....	5,431,559	7,475,355	17,051,571	10,963,937	14,516,292	13,547,388	3,736,462	2,606,372*	-1,264,239*
5. Trended Value End of Period	92,118,867 A	97,550,426 B	103,786,891 C	117,693,719 D	127,716,126 E	144,083,267 F	151,363,033 G	145,942,032 H	126,798,805 I	129,297,791
Right of Way:										
6. Book Value plus Undistr. Constr. Exp. End of Period—at 100%	1,354,907	1,421,549	1,418,723	1,420,876	1,500,857	1,579,461	1,712,919	1,743,117	1,783,806	1,734,866
Restored Land Values:										
7. Trended Value End of Period—Per Appendix "C"	.....	2,430	86,570	434,401	521,174	665,999	644,051	606,085	536,771	556,172
8. Total Fixed Capital End of Period	$93,473,774	$98,974,405	$105,242,189	$119,598,496	$129,737,137	$146,328,727	$153,720,003	$148,290,234	$129,118,382	$131,608,829
	6-30-25		6-30-26	6-30-27	6-30-28	6-30-29	6-30-30	6-30-31	6-30-32	6-30-33
Average Fixed Capital:										
9. Based Upon Line 8, First and End of Period	93,473,774		102,108,297	112,420,342	124,667,816	138,032,932	150,024,365	151,005,118	138,704,308	130,363,435
Working Capital Including Materials and Supplies										
10. Average Per Appendix "E"	2,948,508		2,923,563	3,062,701	3,218,291	3,451,024	3,250,138	2,804,990	2,497,606	3,044,894
Total Property Used and Useful										
11. Total Lines 9 and 10	96,422,276		105,031,860	115,473,043	127,886,107	141,483,956	153,274,503	153,810,108	141,202,004	133,408,379
Less—										
12. Interstate Proportion of Total	2,714,788		3,264,086	4,436,691	5,468,373	6,718,330	7,591,456	8,538,445	7,576,349	7,158,173
13. Intrastate Property Used and Useful	$93,707,488		$101,767,774	$111,036,352	$122,417,735	$134,765,576	$145,683,047	$145,271,663	$133,625,655	$126,250,206

NOTE—The composite percentages shown on Line 2 were developed by the Commission's Engineers and represent the relation of values for each current period to the preceeding period and they have been applied to the basic figures bearing corresponding alphabetical designations.

The total property used and useful shown on Lines 11 to 13 inclusive is forwarded to the rate study on Appendix "M". Interstate and Intrastate Allocations have been made on the basis of percentages shown on Appendix "L".

Line 6 includes undistributed construction expenditures at 6-30-25 added to book figures in all columns as follows: 6% interest during construction, $74,582—Taxes during construction, $12,420—General expenses, $24,861—Total, $111,873. There is also included a book deduction covering re-classification during the 11 months of 1933 in the amount of $3,630.

*Indicates red figures.

APPENDIX C

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

RESTORATION OF LAND VALUES FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE AND TRENDS OF SUCH VALUES.

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Restoration Due to Becoming Useful										
Land Values Disallowed as Not Used and Useful:										
1. At 6-30-25—Trended Value—Percent of Line 1		100.00% A	98.73% B	96.97% C	99.30% D	101.45% E	95.65% F	98.95% G	98.71% H	100.98% I
2. Trended Value—Amount	$666,613 A	$666,613 B	$677,893 C	$657,358 D	$652,094 E	$661,549 F	$632,772 G	$594,480 H	$627,871 I	$645,981
Periods During Which Disallowed Land Values Continued to Be Not Used and Useful:										
3. Parcel No. 17—Columbus, to July, 1925	2,430	.....	.....	.....	.....	.....	.....	.....	.....	.....
4. " " 21—Cleveland, to June, 1925	34,609 A	34,609	.....	.....	.....	.....	.....	.....	.....	.....
5. " " 9—Toledo, to April, 1927	159,280 A	159,280 B	157,237	.....	.....	.....	.....	.....	.....	.....
6. " " 19—Cleveland, to May, 1927	309,664 A	309,664 B	305,731	.....	.....	.....	.....	.....	.....	.....
7. " " 18—Columbus, to February, 1928	20,300 A	20,300 B	20,042 C	19,435	.....	.....	.....	.....	.....	.....
8. " " 1—Springfield, to October, 1928	22,500 A	22,500 B	22,214 C	21,541	.....	.....	.....	.....	.....	.....
9. " " 17—Cleveland, to December, 1929	55,200 A	55,200 B	54,499 C	52,848 D	52,425	.....	.....	.....	.....	.....
10. " " 8—Dayton, to Date	72,500 A	72,500 B	71,579 C	69,410 D	68,855 E	69,853 F	66,816 G	62,772 H	56,680 I	57,233
11. " " 9—Toledo, to Date	7,000 A	7,000 B	6,911 C	6,702 D	6,648 E	6,744 F	6,451 G	6,061 H	5,477 I	5,526
12. " " 1—Coshocton, to Date	3,150 A	3,150 B	3,110 C	3,016 D	2,998 E	3,035 F	2,903 G	2,727 H	2,419 I	2,441
13. Total Trended Values During Periods of Non-Use	$666,613	$684,183	$641,328	$172,992	$130,920	$79,632	$76,168	$71,560	$63,481	$66,200
14. Total Restoration Due to Becoming Useful (3-13)	.....	2,430	36,570	484,401	521,174	581,917	556,604	522,920	563,890	577,681
Restoration Due to Reduction of Book Net Additions										
15. Parcel No. 8—Dayton, Cr. Net Add'ns in June, 1929	.....	.....	.....	.....	.....	84,082 F	80,494 G	75,558 H	67,086 I	69,013
16. Parcel No. 9—Toledo, Cr. Net Add'ns in Sept., 1930	.....	.....	.....	.....	.....	.....	7,022 G	6,598 H	5,839 I	6,036
17. Parcel No. 1—Coshocton, Cr. Net Add'ns in Jan., 1932	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,813
18. Total Restoration Due to Reduction of Net Add'ns	.....	.....	.....	.....	.....	$84,082	$87,447	$82,156	$72,861	$78,861
19. Total Restored Land Values (Line 14 plus Line 18)	.....	$2,430	$36,570	$484,401	$521,174	$665,999	$644,051	$605,085	$636,771	$656,172

NOTE—The composite percentages shown on Line 1 were developed by the Commission's Engineers and represent the relation of values for each current period to the preceding period and they have been applied to the basic figures bearing corresponding alphabetical designations.
The totals on Line 19 are forwarded to Appendix "B", Line 7.

APPENDIX D

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3387

UNDISTRIBUTED CONSTRUCTION EXPENDITURES AS OF JUNE 30, 1925

Figures as of 6-30-25		Reproduction Value	Present Value
1. Total physical property per Appendix "A" Line 33		$96,462,501	$82,686,694
Less:			
2. Right of way	Acct. 207	1,943,084	1,943,084
3. Land	Acct. 211	3,256,854	3,256,854
4. Buildings	Acct. 212	7,788,774	7,023,994
5. General Equipment	Acct. 261-265	1,716,807	1,330,743
6. Total		$14,005,469	$13,554,557
7. Balance physical property		$81,457,032	$69,712,047
Less:			
Estimated material values of W. E. Co. installed switchboards:			
8. Central Office telephone equipment	Acct. 221	$11,422,613	$9,794,891
9. Other equipment of Central Offices	Acct. 222	118,534	100,414
10. Private branch exchanges	Acct. 234	875,665	750,088
Estimated material value of wire:			
11. Interior block wires	Acct. 233	40,989	33,742
12. Exchange aerial wire	Acct. 243	2,188,925	1,679,343
13. Toll aerial wire	Acct. 253	1,951,413	1,773,851
14. Total		$16,578,068	$14,180,994
15. Balance physical property		$64,878,964	$55,531,123
Undistributed Construction Expenditures as of 6-30-25			
16. Omissions ..... 1% of Line 7		$814,570	$697,150
17. Interest during construction ..... 6% of Line 1		5,727,750	4,903,986
18. Engineering ..... 5% of Line 15		3,943,948	3,779,698
19. Taxes during construction ..... 1% of Line 1		964,625	825,666
20. General expenses ..... 2% of Line 1		1,909,350	1,651,232
21. Total		$12,650,143	$10,907,178

APPENDIX E

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

WORKING CAPITAL INCLUDING MATERIALS AND SUPPLIES FOR EACH YEAR FROM 1925 TO 1933 BOTH INCLUSIVE

	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Working Capital—									
Average Expenses for One Month:									
1. Current Maintenance Expenses	$395,363	$437,474	$464,435	$509,929	$634,729	$636,599	$609,012	$540,520	$467,631
2. Traffic Expenses	626,387	672,885	709,133	707,987	775,718	709,413	596,288	459,793	392,807
3. Commercial Expenses	191,611	207,937	229,397	251,889	286,423	293,008	302,993	287,621	207,195
4. General & Miscellaneous Expenses	81,344	81,306	98,240	152,924	174,759	162,498	160,584	142,328	163,354
5. Taxes Assignable to Operations	215,914	248,758	279,002	309,250	310,378	345,605	339,484	340,661	353,100
6. Rent Deductions	47,547	49,417	48,538	45,585	61,133	73,209	59,631	46,474	37,958
7. Total Expenses for One Month	$1,558,166	$1,697,777	$1,828,745	$1,977,564	$2,243,140	$2,220,332	$2,067,997	$1,817,397	$1,562,095
Materials and Supplies—									
Average Book Inventory:									
8. Balance First of Period	See	1,403,783	1,047,788	1,400,125	1,081,329	1,334,439	725,172	748,834	511,764
9. Balance End of Period	Note	1,047,788	1,400,125	1,081,329	1,334,439	725,172	748,834	611,764	2,353,834
10. Average for Each Period	1,390,336	1,225,786	1,223,956	1,240,727	1,207,884	1,029,806	737,003	680,299	1,432,799
11. Total Working Capital Including Materials and Supplies, (Line 7 plus Line 10)	$2,948,502	$2,923,563	$3,052,701	$3,218,291	$3,451,024	$3,250,138	$2,804,990	$2,497,696	$3,044,894

NOTE—Actual materials and supplies at June 30, 1925, per books used for 1925; average based upon balances at first and end of each period used for other years. The totals on Line 11 are forwarded to Appendix "B", Line 10.

APPENDIX F

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

REVENUES, EXPENSES AND NET INCOME FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE.

	Year 1925			Year 1926		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
1. Exchange Service Revenues	$24,554,399	$273,896	$24,280,503	$26,028,407	$304,798	$25,723,614
2. Toll Service Revenues	5,966,056	670,841	5,296,715	6,822,179	777,908	6,044,271
3. Miscellaneous Operating Revenues	720,598	31,690	688,908	744,883	40,671	704,213
4. Total	$31,241,053	$975,827	$30,265,126	$34,205,469	$1,123,172	$32,082,297
5. Less, Licensee Revenue—Dr.	820,977	14,888	806,215	874,557	17,467	857,090
6. Telephone Operating Revenues	$30,720,976	$961,035	$29,759,941	$33,330,912	$1,105,705	$32,225,207
7. Net Non-Operating Revenues	120,234	19,970	100,264	122,783	26,021	96,162
8. Total Revenues	$30,841,210	$981,005	$29,860,205	$33,753,695	$1,142,226	$32,321,369
Expenses and Deductions						
9. Current Maintenance Expenses	$4,744,257	$119,588	$4,627,709	$5,249,686	$145,218	$5,104,470
10. Depreciation of Tel. Plant and Equipment	3,273,236	96,819	3,179,417	3,736,284	110,702	3,625,622
11. Traffic Expenses	7,516,042	209,018	7,307,036	8,074,616	314,858	7,759,758
12. Commercial Expenses	2,296,231	72,018	2,227,213	2,496,252	81,968	2,413,284
13. General and Miscellaneous Expenses	976,134	28,033	947,941	975,272	31,905	943,767
14. Uncollectible Operating Revenues	88,155	2,692	85,463	163,410	5,276	158,084
15. Taxes Assignable to Operations	2,890,970	70,691	2,820,279	2,965,097	85,414	2,879,683
16. Rent Deductions	570,563	27,667	542,896	589,005	31,391	557,614
17. Western Electric Co. Excess Profits—Cr.						
18. Total Expenses and Deductions	$22,159,988	$681,854	$21,478,034	$24,253,124	$806,903	$23,456,133
Net Income						
19. Line 8 less Line 18	$8,681,222	$299,651	$8,382,171	$9,500,571	$335,344	$9,165,227

	Year 1930			Year 1931		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
20. Exchange Service Revenues	$31,422,892	$446,089	$30,976,803	$33,721,537	$457,076	$33,264,461
21. Toll Service Revenues	8,949,066	1,172,602	7,776,464	8,193,853	1,140,278	7,053,575
22. Miscellaneous Operating Revenues	1,531,087	402,561	1,128,476	1,521,459	436,288	1,085,171
23. Total	$44,902,995	$2,021,252	$42,881,743	$43,437,879	$2,033,640	$41,404,239
24. Less, Licensee Revenue—Dr.	533,458	18,619	514,839	521,084	19,853	501,231
25. Telephone Operating Revenues	$44,369,537	$2,002,633	$42,366,874	$42,916,795	$2,013,787	$40,903,008
26. Net Non-Operating Revenues	39,433		39,433	31,982		31,982
27. Total Revenues	$44,407,989	$2,002,633	$42,405,306	$42,948,777	$2,013,787	$40,934,990
Expenses and Deductions						
28. Current Maintenance Expenses	$7,629,184	$239,685	$7,389,499	$7,308,142	$228,731	$7,079,361
29. Depreciation of Tel. Plant and Equipment	5,735,502	246,941	5,488,561	6,099,942	294,744	5,805,198
30. Traffic Expenses	8,212,954	427,210	8,065,744	7,155,461	287,324	6,788,137
31. Commercial Expenses	3,516,099	160,181	3,355,918	3,625,865	154,545	3,471,320
32. General and Miscellaneous Expenses	1,949,976	89,309	1,860,667	1,927,010	85,194	1,841,816
33. Uncollectible Operating Revenues	539,233	24,400	515,433	475,442	23,069	452,374
34. Taxes Assignable to Operations	4,147,254	181,122	3,966,132	4,073,907	208,029	3,865,778
35. Rent Deductions	878,504	74,004	804,500	715,589	30,141	685,448
36. Western Electric Co. Excess Profits—Cr.	23,208*	873*	22,335*	154,294*	6,264*	148,030*
37. Total Expenses and Deductions	$32,996,105	$1,441,889	$31,454,219	$31,226,345	$1,453,773	$29,782,572
Net Income						
38. Line 27, less Line 37	$11,511,831	$560,744	$10,951,087	$11,718,432	$510,014	$11,109,418

APPENDIX F

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3387

REVENUES, EXPENSES AND NET INCOME FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE—Concluded.

	Year 1927			Year 1928			Year 1929		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues									
1. Exchange Service Revenues	$26,617,757	$648,504	$25,969,253	$30,447,907	$872,900	$29,575,047	$33,131,088	$644,909	$32,486,179
2. Toll Service Revenues	7,207,442	891,713	6,315,729	8,816,846	1,017,849	7,799,077	9,448,102	1,344,229	8,103,873
3. Miscellaneous Operating Revenues	873,819	36,338	836,061	986,021	43,903	942,118	1,056,407	48,288	1,008,079
4. Total	*$36,797,018	$1,576,445	$35,221,073	$39,691,274	$1,433,132	$38,258,242	$44,635,595	$2,151,518	$42,484,077
5. Less, Licenses Revenue—Dr.	696,406	80,556	615,849	430,808	14,102	416,709	445,971	18,546	427,425
6. Telephone Operating Revenues	$36,101,113	$1,495,889	$34,605,224	$39,270,476	$1,418,948	$37,851,533	$43,989,624	$2,132,972	$41,856,652
7. Net Non-Operating Revenues	390,389	194,167	96,188	370,836	213,788	157,113	45,137	.....	45,137
8. Total Revenues	$36,491,542	$1,690,056	$34,801,386	$39,641,314	$1,632,736	$38,008,646	$44,034,761*	$2,132,972	$41,901,789
Expenses and Deductions									
9. Current Maintenance Expenses	$5,573,216	$175,217	$5,397,998	$6,119,142	$201,529	$5,917,613	$7,616,749	$205,510	$7,411,239
10. Depreciation of Tel. Plant and Equipment	4,308,774	143,845	4,164,929	4,788,513	170,011	4,618,502	5,183,488	203,213	4,980,275
11. Traffic Expenses	8,509,906	305,961	8,143,945	8,486,241	279,891	8,116,350	8,906,615	404,998	8,501,617
12. Commercial Expenses	6,788,780	301,067	6,481,698	8,052,974	181,998	7,870,976	8,487,974	188,588	8,299,386
13. General and Miscellaneous Expenses	1,179,888	45,151	1,133,736	1,886,084	76,316	1,799,768	2,097,146	99,648	1,997,498
14. Uncollectible Operating Revenue	188,708	5,823	182,885	212,916	7,877	205,039	213,781	15,143	198,638
15. Taxes Assignable to Operations	3,946,025	118,122	3,827,903	3,710,998	145,708	3,565,291	3,794,540	149,127	3,645,413
16. Rent Deductions	513,600	38,606	474,994	547,086	46,118	500,968	720,888	62,886	658,002
17. Western Electric Co. Excess Profits—Cr.	.....	.....	.....	.....	.....	.....	.....	.....	.....
18. Total Expenses and Deductions	$36,227,422	$996,308	$35,343,219	$33,672,208	$1,156,139	$37,514,109	$38,416,856	$1,464,068	$36,952,788
Net Income									
19. Line 8 less Line 18	$10,214,080	$454,853	$9,758,167	$10,966,082	$476,480	$10,494,543	$11,567,886	$670,910	$10,896,997

	Year 1930			Year 1931		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
1. Exchange Service Revenues	$30,688,821	$216,220	$30,472,601	$26,220,228	$228,057	$25,991,941
2. Toll Service Revenues	8,349,139	797,259	7,551,881	5,295,788	826,128	4,469,660
3. Miscellaneous Operating Revenues	1,008,949	445,859	563,087	1,075,411	456,790	618,621
4. Total	$37,726,417	$1,459,488	$36,267,979	$32,595,427	$1,510,979	$31,079,722
5. Less, Licenses Revenue—Dr.	651,584	14,580	636,404	606,184	13,074	593,110
6. Telephone Operating Revenues	$37,079,833	$1,444,908	$35,634,925	$31,989,243	$1,497,905	$30,491,338
7. Net Non-Operating Revenues	18,843	.....	18,843	.....	.....	.....
8. Total Revenues	$37,098,176	$1,444,908	$35,653,268	$31,989,243	$1,497,905	$30,491,338
Expenses and Deductions						
9. Current Maintenance Expenses	$6,496,943	$178,565	$6,317,378	$5,613,177	$184,581	$5,428,596
10. Depreciation of Tel. Plant and Equipment	6,134,889	176,379	5,958,511	6,072,467	174,888	5,897,579
11. Traffic Expenses	8,817,817	298,341	8,519,476	8,008,621	184,613	7,823,908
12. Commercial Expenses	8,421,189	111,370	8,309,819	8,226,257	80,898	8,145,359
13. General and Miscellaneous Expenses	1,707,691	74,587	1,633,104	1,990,547	89,211	1,901,336
14. Uncollectible Operating Revenue	850,207	29,849	820,358	806,731	22,824	783,907
15. Taxes Assignable to Operations	4,427,993	121,474	4,306,519	4,227,993	122,888	4,105,105
16. Rent Deductions	687,888	56,889	631,184	636,888	51,888	585,000
17. Western Electric Co Excess Profits—Cr.	137,000*	4,000*	133,000*	.....	.....	.....
18. Total Expenses and Deductions	$39,889,884	$1,149,469	$37,887,849	$35,190,814	$1,018,840	$34,169,974
Net Income						
19. Line 17, less Line 18	$8,888,192	$294,446	$8,267,749	$7,847,795	$479,065	$6,899,028

NOTE—Licenses Revenue—Dr. shown on lines 5 and 21 is analyzed on Appendix "C".

Depreciation of telephone plant and equipment shown on lines 10 and 26 is analyzed on Appendix "G".

Interstate and Intrastate allocations have been made on the basis of percentages shown on Appendix "D".

Amounts for the year 1933 are estimated on the basis of eleven months' operations to 11-30-33.

The net income shown on lines 19 and 35 is forwarded to the rate study on Appendix "H".

*Indicates red figures.

APPENDIX H

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

A. T. & T. COMPANY DEPARTMENTAL EXPENSES ALLOWED AND DISALLOWED AS PART OF COST OF LICENSE CONTRACT SERVICES FOR EACH YEAR FROM 1925 TO 1931, BOTH INCLUSIVE.

	Dept. No.	Proportion	Reference to Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Departmental Expenses Allowed										
1. Operation and Engineering	No. 1	Entire	A-108-B	$121,200	$131,722	$141,563	$154,161	$168,039	$176,470	$164,526
2. Development and Research	No. 2	Partial	A-117-B	100,387	108,968	131,464	147,267	160,696	230,916	235,932
3. Information	No. 3	None	A-124-B							
4. Personnel	No. 4	Partial	A-150 & 151-B	14,824	17,526	28,572	30,782	34,845	35,291	33,886
5. Public Relations	No. 5	None	A-153-B							
6. Treasurer	No. 6	Partial	A-154-B	606	680	1,214	958	1,119	1,281	1,260
7. Comptroller	No. 7	Partial	A-155-B	22,752	24,620	26,088	27,202	29,315	30,626	30,506
8. Secretary	No. 8	None	A-156-B							
9. Administrative Including Sundry	No. 9	One-half	A-157-B	14,361	14,106	16,336	14,586	15,558	14,384	12,923
10. General Service Bureau	No. 10	One-half	A-158-B	7,023	8,063	8,277	8,890	9,833	10,443	9,585
11. Operation—General	No. 11	None	A-159-B							
12. Legal	No. 12	Entire	A-160-B	27,283	26,354	28,075	36,140	23,222	33,662	31,487
13. Total Allowed			A-170-B, Line A	$308,536	$332,069	$381,589	$419,986	$442,627	$532,473	$520,006
Departmental Expenses Disallowed										
14. Operation and Engineering	No. 1	None	A-108-B							
15. Development and Research	No. 2	Partial	A-117-B	39,613	56,032	75,536	69,733	109,304	149,084	102,068
16. Information	No. 3	Entire	A-124-B	31,184	35,103	31,514	41,441	55,377	54,324	52,365
17. Personnel	No. 4	Partial	A-150 & 151-B	9,120	9,853	7,776	6,196	6,778	6,845	5,674
18. Public Relations	No. 5	Entire	A-153-B	1,129	1,086	1,086	1,120	1,444	1,932	1,483
19. Treasurer	No. 6	Partial	A-154-B	35,525	50,871	39,708	61,266	59,818	91,774	58,949
20. Comptroller	No. 7	Partial	A-155-B	22,721	24,647	26,936	29,436	31,332	33,508	31,810
21. Secretary	No. 8	Entire	A-156-B	2,389	2,453	2,348	2,571	2,639	2,527	2,038
22. Administrative Including Sundry	No. 9	One-half	A-157-B	14,361	14,106	16,335	14,585	15,559	14,385	12,922
23. General Service Bureau	No. 10	One-half	A-158-B	7,023	8,063	8,278	8,890	9,832	10,443	9,535
24. Operation—General	No. 11	Entire	A-159-B	8,694	9,682	9,349	10,113	10,857	11,147	10,071
25. Legal	No. 12	None	A-160-B							
26. Total Disallowed			A-170-B, Line A	$171,759	$211,896	$218,926	$245,851	$302,940	$375,969	$286,915
Total Departmental Expenses										
27. As Shown on Appendix "J", Line 26				$480,295	$543,965	$600,515	$665,837	$745,567	$908,442	$806,921
Note—The amounts on line 13 are forwarded to Appendix "G", lines 1 & 9. The partial amounts allowed on line 7 cover the following items:										
Comptroller—Dept. No. 7—										
Bell System Methods			A-155-B	$9,473	$10,437	$11,215	$11,412	$12,381	$13,022	$12,595
Chief Traveling Auditor			A-155-B	7,397	7,492	7,688	8,355	8,735	8,928	9,283
Chief Accountant			A-155-B	1,341	1,451	1,681	1,669	2,097	2,214	2,107
Proportion of Undistributed			A-155-B	3,735	4,476	4,622	4,778	5,162	5,511	5,509
Proportion of Administration			A-155-B	806	764	881	988	940	951	1,011
Total Allowed—Line 7				$22,752	$24,620	$26,088	$27,202	$29,315	$30,626	$30,506

The partial amounts disallowed on lines 15, 17, 19 and 20 are detailed on Appendix "I".

APPENDIX I

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 336

DETAILS OF PARTIAL AMOUNTS OF A. T. & T. COMPANY DEPARTMENTAL EXPENSES DISALLOWED FOR EACH YEAR FROM 1925 TO 1931, BOTH INCLUSIVE

	Reference To Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Development and Research—Dept. No. 2								
Picture Transmission	A-118-B	.....	$5,989	$5,911	$4,188	$3,458	$4,321	$7,408
Television	A-118-B	.....	1,324	10,067	3,339	5,819	3,717	3,270
Radio and Subm. Cable Tele. Conn. Eq. & Ccts.	A-118-B	.....	.....	.....	.....	.....	14,961	14,339
Radio Transmission Systems	A-118-B	30,397	33,252	43,871	44,529	66,611	81,203	46,424
Vacuum Tubes	A-118-B	9,216	12,389	11,469	10,812	11,206	14,373	14,903
Photo Electric Cells	A-118-B	.....	1,078	620	1,223	1,415	1,251	2,920
Submarine Cable	A-118-B	.....	.....	3,898	3,643	21,095	27,298	15,804
Total Disallowed—Appendix "H" Line 15		$39,613	$56,032	$75,536	$69,733	$109,304	$149,084	$102,068
Personnel—Dept. No. 4								
Special Training	A-150-B	2,746	2,984	2,393	2,605	2,888	2,885	2,276
"Other" Items Shown in Col. 4	A-150-B	1,419	1,619	1,504	1,591	1,740	1,652	1,224
Public Relations	A-150-B	599	611	610	636	763	683	638
"Other" Items Shown in Col. 4	A-151-B	748	1,071	1,206	1,361	1,447	1,625	1,536
Interest on Empl. Benefit Fund	Heiss No. 10 Supl.	3,608	3,618	2,063	.....	.....	.....	.....
Total Disallowed—Appendix "H" Line 17		$9,120	$9,853	$7,776	$6,196	$6,778	$6,845	$5,674
Treasurer—Dept. No. 6								
Direct Distribution of Securities	Ill. N. R. 861	2,133	16,587	2,993	22,201	15,478	36,456	5,033
Servicing Securities	Ill. N. R. 864	28,868	29,489	29,671	31,548	36,976	41,903	40,169
Handling Funds and Making Advances	Ill. N. R. 863	2,483	2,506	3,133	3,285	3,617	4,111	4,274
Financing General Department	Ill. N. R. 862	1,616	1,631	2,039	2,137	2,354	2,875	2,782
Handling Employees' Stock Plan	Ill. N. R. 862	425	658	1,932	2,095	1,393	6,629	6,691
Total Disallowed—Appendix "H" Line 19		$35,525	$50,871	$39,768	$61,266	$59,818	$91,774	$58,949
Comptroller—Dept. No. 7								
General Books and Records	A-155-B	4,942	5,367	5,957	6,432	7,100	7,926	7,850
Chief Statistician	A-155-B	10,205	11,032	12,207	13,455	14,353	15,090	14,342
Bell System Reports	A-155-B	3,033	3,001	3,088	3,311	3,358	3,421	2,918
Proportion of Undistributed	A-155-B	3,735	4,481	4,774	5,169	5,516	6,031	5,745
Proportion of Administration	A-155-B	806	766	910	1,069	1,005	1,040	1,055
Total Disallowed—Appendix "H" Line 20		$22,721	$24,647	$26,936	$29,436	$31,332	$33,508	$31,810

APPENDIX J

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

TOTAL A. T. & T. COMPANY DEPARTMENTAL EXPENSES AND FAIR PROPORTION THEREOF ALLOCABLE TO THE OHIO BELL TELEPHONE COMPANY AS SHOWN ON PAGE 223 OF COMPANY'S BRIEF FOR EACH YEAR FROM 1925 TO 1931, BOTH INCLUSIVE, AS CLAIMED BY COMPANY

	Dept. No.	Reference to Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Total Departmental Expenses		A-103 & 170-B	$2,963,159	$3,301,306	$3,562,940	$3,813,983	$4,102,105	$4,340,568	$4,234,967
1. Operation and Engineering	No. 1	A-117-B	3,402,573	4,130,418	5,182,815	5,289,081	6,738,114	9,260,867	8,635,309
2. Development and Research	No. 2	A-124-B	738,027	854,747	786,989	1,031,629	1,344,765	1,349,439	1,305,138
3. Information	No. 3	A-150 & 151-B	603,523	707,960	938,415	924,418	1,056,306	1,100,273	1,080,695
4. Personnel	No. 4	A-153-B	26,252	25,860	25,850	26,038	32,987	45,405	35,317
5. Public Relations	No. 5	A-154-B	888,219	1,298,847	1,096,942	1,549,332	1,495,599	2,349,694	1,553,145
6. Treasurer	No. 6	A-155-B	1,117,884	1,241,284	1,341,620	1,410,248	1,488,481	1,619,429	1,607,471
7. Comptroller	No. 7	A-156-B	59,725	62,817	60,452	65,040	65,881	64,965	53,526
8. Secretary	No. 8	A-157-B	706,094	710,799	820,065	726,324	763,731	726,445	666,682
9. Administrative, incl. Sundry	No. 9	A-158-B	345,309	406,307	418,879	442,702	482,643	527,394	491,918
10. General Service Bureau	No. 10	A-159-B	211,565	240,549	233,029	254,250	268,798	277,792	273,631
11. Operation—General	No. 11	A-160-B	668,165	659,735	720,319	936,315	591,505	861,264	817,142
12. Legal	No. 12								
13. Total			$11,730,495	$13,640,629	$15,134,915	$16,469,360	$18,430,910	$22,528,535	$20,774,941
Allocable to the Ohio Bell Tel. Co.		A-108-B	$121,300	$131,722	$141,563	$154,161	$168,039	$176,470	$164,528*
14. Operation and Engineering	No. 1	A-117-B	140,000	165,000	207,000	217,000	270,000	380,000	338,000
15. Development and Research	No. 2	A-124-B	31,184	35,103	31,514	41,441	55,377	54,324	52,365
16. Information	No. 3	A-150 & 151-B	23,944	27,379	36,348	36,978	41,623	42,136	39,560
17. Personnel	No. 4	A-153-B	1,129	1,066	1,086	1,120	1,444	1,932	1,483
18. Public Relations	No. 5	A-154-B	36,131	51,551	40,982	62,224	60,967	93,055	60,209
19. Treasurer	No. 6	A-155-B	45,473	49,267	53,024	56,638	60,647	64,134	62,315
20. Comptroller	No. 7	A-156-B	2,389	2,453	2,348	2,571	2,639	2,527	2,038
21. Secretary	No. 8	A-157-B	28,722	28,212	32,671	29,171	31,117	28,769	25,845
22. Administrative, incl. Sundry	No. 9	A-158-B	14,046	16,126	16,555	17 780	19,665	20,886	19,070
23. General Service Bureau	No. 10	A-159-B	8,694	9,682	9,349	10,116	10,857	11,147	10,071
24. Operation—General	No. 11	A-160-B	27,383	26,354	28,075	36,140	23,222	33,062	31,437
25. Legal	No. 12								
26. Total			$480,295	$543,935	$600,515	$665,337	$745,567	$908,442	$806,921*

NOTE—The portions of lines 14 to 26, inclusive, which are allowed and disallowed are shown on Appendix "H".
*$10,000.00 added to correct error in figures shown in Company's brief.

APPENDIX K

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

DEPRECIATION EXPENSE ALLOWED ON DEPRECIABLE FIXED CAPITAL FOR EACH YEAR FROM 1925 TO 1933 BOTH INCLUSIVE

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928
Total Fixed Capital—					
1. Final Present Value Fixed by Commission—Appendix "A"	$93,473,774	.....	.....	.....	.....
2. Net Additions During Period—Per Books	.....	$5,498,201	$7,472,534	$17,053,219	$11,043,418
Non-Depreciable Fixed Capital—					
3. Right of Way	1,243,064	66,642	2,831*	1,648	80,481
4. Land	3,256,854	69,276	11,111	163,237	765,893
5. Station Installations	1,627,538	69,908	197,122	249,079	281,111
6. Interior Block Wires	67,105	345	789	8,966	8,382
7. Drop Wires	1,232,185	.....	Not Available from Record		.....
8. General Store Equipment	15,454	825	1,712	2,525	2,825
9. General Stable and Garage Equipment	489,248	99,494	81,398	64,726	129,175
10. General Tools and Implements	295,436	83,818	157,394*	84,153	62,495
11. Undistributed Construction Expenditures	916,026	.....	Not Available from Record		.....
12. Total Non-Depreciable Property	9,142,880	339,808	131,917	524,394	1,330,362
Depreciable Fixed Capital—					
13. Net Additions During Period—Line 2 less Line 12	.....	5,158,393	7,340,617	16,528,885	9,713,056
14. Balance First of Period—From Line 15	.....	84,330,894	89,489,287	96,829,904	113,358,789
15. Balance End of Period—Line 13 plus Line 14	84,330,894	89,489,287	96,829,904	113,358,789	123,071,845
16. Average During Period Based Upon Lines 14 and 15	84,330,894 (Year 1925)	.....	93,159,596	105,094,347	118,215,317
Depreciation Expense—					
17. At 4% of Line 16	3,373,236	.....	3,726,384	4,203,774	4,728,613

	Year 1929	Year 1930	Year 1931	Year 1932	Year 1933
Total Fixed Capital—					
18. Final Present Value Fixed by Commission—Appendix "A"	.....	.....	.....	.....	.....
19. Net Additions During Period—Per Books	14,594,896	13,680,846	3,766,660	2,626,683*	1,286,070*
Non-Depreciable Fixed Capital—					
20. Right of Way	78,604	133,458	30,198	39,689	31,741*
21. Land	768,559	561,745*	39,578*	49,461*	61,232
22. Station Installations	353,710	71,532	29,331	296,308*	
23. Interior Block Wires	8,013	7,182	7,770	1,049*	527,553*
24. Drop Wires	.....	Not Available from Record		.....	.....
25. General Store Equipment	4,083	6,993*	1,911*	955*	
26. General Stable and Garage Equipment	102,866	142,528*	121,464*	141,094*	105,785*
27. General Tools and Implements	101,475	96,292*	53,468*	88,600*	
28. Undistributed Construction Expenditures	.....	Not Available from Record			.....
29. Total Non-Depreciable Property	1,417,310	595,386*	149,122*	487,778*	603,857*
Depreciable Fixed Capital—					
30. Net Additions During Period—Line 19 less Line 29	13,177,586	14,276,232	3,915,782	2,138,905*	682,213*
31. Balance First of Period—From Line 32	123,071,845	136,249,431	150,525,663	154,441,445	152,302,540
32. Balance End of Period—Line 30 plus Line 31	136,249,431	150,525,663	154,441,445	152,302,540	151,620,327
33. Average During Period Based Upon Lines 31 and 32	129,660,638	143,387,547	152,483,554	153,371,993	151,961,434 (Year 1933)
Depreciation Expense—					
34. At 4% of Line 33	5,186,426	5,735,502	6,099,342	6,134,880	6,078,457

NOTE—Depreciation Expense on Station Installations, Interior Block Wires and Drop Wires (Lines 5-7 and 22-24) has been allowed as charged on the books to Maintenance Acct. 607—Station Removals and Changes. Depreciation Expense on General Store Equipment, General Stable and Garage Equipment and General Tools and Implements (Lines 8-10 and 25-27) has been allowed as charged on the books to Maintenance Expenses and Gross Additions to Plant. Therefore, these items are treated above as Non-Depreciable for purposes of computing the specific allowable depreciation expense chargeable to Acct. 608—Depreciation of Telephone Plant and Equipment.

Prior to the re-classification of accounts to conform with the revised I. C. C. regulations effective January 1, 1933, specific changes in Drop Wires (Lines 7 and 24), and undistributed construction expenditures (Lines 11 and 28) were not available from the record, and therefore, have not been considered in the above computations.

*Indicates red figures.

The amounts on Lines 17 and 34 are forwarded to Appendix "F", Lines 10 and 29.

APPENDIX L

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

BASIS OF INTERSTATE AND INTRASTATE ALLOCATIONS FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE.

	1925		1926		1927		1928	
	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate
Valuation :								
1. Total Property	2.81553%	97.18446%	3.10771%	96.89229%	3.84304%	96.15696%	4.27597%	95.72403%
Revenues								
2. Exchange Service Revenue	1.11547%	98.88453%	1.14602%	98.85398%	1.21741%	98.78259%	1.22261%	98.77739%
3. Toll Service Revenues	11.23501%	88.76499%	11.38506%	88.61494%	12.20320%	87.79680%	12.23523%	87.76477%
4. Miscellaneous Operating Revenues	4.20962%	95.80038%	5.43227%	94.56773%	4.16560%	95.83431%	4.67220%	95.32780%
5. Licensee Revenues—Debit	2.85771%	97.14229%	2.04000%	97.96000%	2.23000%	97.77000%	2.37105%	97.62895%
6. Net Non-Operating Revenues	16.60804%	83.39196%	27.58787%	72.41213%	26.87833%	73.12167%	57.63816%	42.36184%
Expenses								
7. Current Maintenance Expenses	2.45677%	97.54323%	2.76813%	97.23187%	3.14281%	96.85719%	3.29855%	96.70145%
8. Depreciation of Tel. Plant and Equip	2.78127%	97.21873%	2.97229%	97.02771%	3.46989%	96.53011%	3.78570%	96.21430%
9. Traffic Expenses	3.57804%	96.42196%	3.89896%	96.10064%	4.29704%	95.70296%	4.47149%	95.52851%
10. Commercial Expenses	3.13218%	96.86782%	3.28495%	96.71504%	3.67168%	96.32832%	4.05404%	95.94596%
11. General and Miscellaneous Expenses	2.95897%	97.04089%	3.27000%	96.73000%	3.82998%	96.17002%	4.15688%	95.84117%
12. Uncollectable Operating Revenues	3.05387%	96.94613%	3.29000%	96.71000%	3.48000%	96.52000%	3.80558%	96.19441%
13. Taxes Assignable to Operations	2.72896%	97.27104%	3.86136%	97.13865%	3.52644%	96.47150%	3.92022%	96.07978%
14. Rent Deductions	4.84009%	95.15991%	5.29064%	94.70644%	7.53235%	92.46666%	8.42019%	91.58982%
15. W. E. Co. Excess Profits—Credit								

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

BASIS OF INTERSTATE AND INTRASTATE ALLOCATIONS FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE—CONCLUDED.

	1929		1930		1931		1932		1933
	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	
Valuation									
1. Total Property	4.74851%	95.25149%	4.93285%	95.06715%	5.55129%	94.44871%	5.36561%	94.63439%	
Revenues									
2. Exchange Service Revenues	1.25079%	98.68922%	1.29691%	98.70409%	1.35540%	98.64460%	1.14950%	98.85050%	
3. Toll Service Revenues	12.17252%	86.82748%	12.10809%	86.89894%	12.91331%	86.08670%	12.08514%	87.91486%	
4. Miscellaneous Operating Revenues	30.71110%	69.28890%	26.23839%	73.76062%	31.90198%	68.09802%	31.75707%	68.24293%	
5. Licensee Revenues—Debit	3.73000%	96.27000%	3.49000%	96.51000%	3.81000%	96.19000%	2.80000%	97.20000%	
6. Net Non-Operating Revenues	.....	100.00000%	.....	100.00000%	.....	100.00000%	.....	100.00000%	Same Percentages Used as for 1932
Expenses									
7. Current Maintenance Expenses	3.48585%	96.51415%	3.19269%	96.80731%	3.13050%	96.86950%	2.78296%	97.34704%	
8. Depreciation of Tel. Plant and Equipment	4.29229%	95.70771%	4.30549%	95.69451%	4.82256%	95.17745%	4.51320%	95.48680%	
9. Traffic Expenses	4.98788%	95.01212%	5.01836%	94.98164%	5.41812%	94.58188%	4.85801%	95.14199%	
10. Commercial Expenses	4.81189%	95.18811%	4.56564%	95.44436%	4.93562%	95.06438%	3.24145%	96.75855%	
11. General and Miscellaneous Expenses	4.58004%	95.41996%	4.58000%	95.42000%	4.94000%	95.06000%	4.50000%	95.50000%	
12. Uncollectable Operating Revenues	4.85000%	95.15000%	4.52000%	95.48000%	4.81000%	95.19000%	4.14000%	95.86000%	
13. Taxes Assignable to Operations	4.51408%	95.48592%	4.98751%	95.02149%	5.10650%	94.89350%	4.43778%	95.56222%	
14. Rent Deductions	9.11909%	90.88091%	8.42387%	91.57613%	8.25492%	91.73808%	4.75769%	95.24231%	
15. W. E. Co. Excess Profits—Credit	.....	.....	3.76163%	96.23837%	4.06005%	95.93995%	3.67946%	96.32054%	

NOTE:
The Above Percentages Were Computed from the Following Information Furnished by the Company:—
Brett Exhibit No. 1.
Eide Exhibit No. 2.
Supplemental Data Furnished with Letter from Karl Burr Dated September 20, 1933.
Statement No. 7 Furnished June 14, 1933.

APPENDIX M

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3397

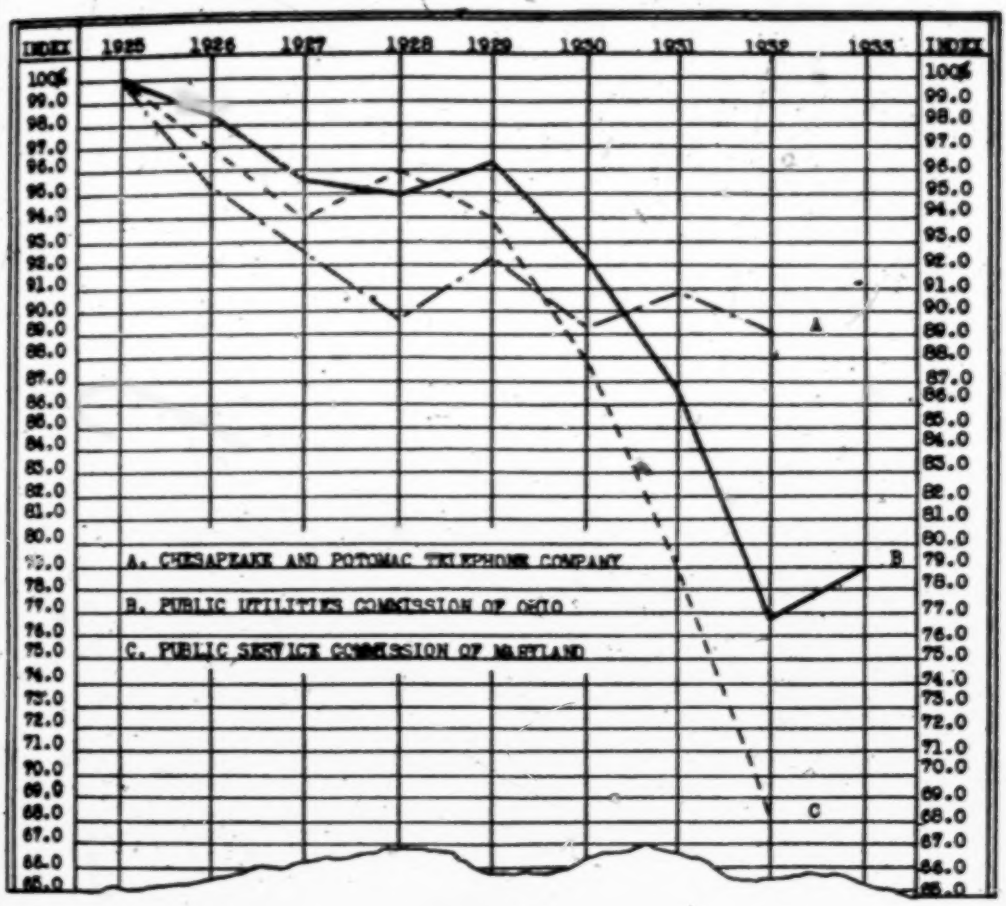
RATE STUDY FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE

	Realized Return as Found by Comm'n			Return Considered as Fair by Commission		Excessive Return as Found by Commission	
	Valuation Appendix "A" & "B"	Net Income Appendix "F"	Rate of Return	Rate	Amount	Rate	Amount
Total for Ohio							
1. Year 1925	$96,422,276	$8,681,822	9.00%				
2. Year 1926	105,081,850	9,500,571	9.05%				
3. Year 1927	115,473,043	10,214,090	8.85%				
4. Year 1928	127,296,107	10,989,062	8.58%				
5. Year 1929	141,483,986	11,667,856	8.18%				
6. Year 1930	153,274,508	11,511,831	7.51%				
7. Year 1931	153,810,108	11,712,432	7.61%				
8. Year 1932	141,202,004	8,652,192	6.13%				
9. Year 1933	133,408,379	7,347,798	5.51%				
10. Average	$129,776,915	$10,017,505	7.72%				
Interstate							
11. Year 1925	$2,714,788	$299,651	11.04%				
12. Year 1926	3,264,066	335,344	10.27%				
13. Year 1927	4,436,521	454,853	10.25%				
14. Year 1928	5,468,372	474,480	8.68%				
15. Year 1929	6,718,380	670,919	9.99%				
16. Year 1930	7,591,456	560,744	7.39%				
17. Year 1931	8,538,445	610,014	7.14%				
18. Year 1932	7,576,849	394,446	5.21%				
19. Year 1933	7,158,173	388,566	5.43%				
20. Average	$5,940,780	$465,446	7.83%				
Intrastate							
21. Year 1925	$93,707,488	$8,382,171	8.95%	7.0%	$6,559,524	1.95%	$1,822,647
22. Year 1926	101,767,774	9,165,227	9.01%	7.0%	7,123,744	2.01%	2,041,483
23. Year 1927	111,036,522	9,759,167	8.79%	7.0%	7,772,557	1.79%	1,986,610
24. Year 1928	122,417,735	10,494,542	8.57%	7.0%	8,569,241	1.57%	1,925,301
25. Year 1929	134,765,576	10,896,937	8.09%	7.0%	9,433,590	1.09%	1,463,347
26. Year 1930	145,683,047	10,951,087	7.52%	6.5%	9,469,398	1.02%	1,481,689
27. Year 1931	145,271,663	11,102,418	7.64%	6.5%	9,442,658	1.14%	1,659,760
28. Year 1932	133,625,655	8,257,746	6.18%	5.5%	7,349,411	.68%	908,335
29. Year 1933	126,250,206	6,959,232	5.51%	5.5%	6,959,232	.....	.....
30. Average	$123,636,185	$9,552,659	7.71%	6.5%	$8,075,484	Total ...	$13,289,172

APPENDIX N

THE OHIO BELL TELEPHONE COMPANY - FORMAL CASE NO. 3307

COMPARISON OF COMPOSITE TRENDS DEVELOPED IN THIS CASE (NO. 3307) WITH COMPOSITE TRENDS DEVELOPED IN THE CASE OF THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND (NO.5484)



PERCENTAGES

*A.	100.0%	96.3%	92.7%	89.6%	92.2%	89.1%	90.8%	89.1%	
B.	100.0%	98.7%	95.7%	95.0%	96.3%	92.2%	86.8%	76.8%	79.1%
*C.	100.0%	97.0%	94.0%	96.8%	94.0%	88.0%	79.0%	68.4%	

Note:-

In applying the trends in this case, the percentages on Line "B" above, which are all based upon 1925, have been used in computing the following percentages which reflect the trend for each individual year based upon investment at the end of the preceding year. 1926, 98.7% of 1925; 1927, 96.97% of 1926; 1928, 99.80% of 1927; 1929, 101.65% of 1928; 1930, 95.65% of 1929; 1931, 95.95% of 1930; 1932, 86.7% of 1931 and 1933, 102.9% of 1932.

Authorities used in computing the percentages on Line "B" above are explained in the opinion.

* These percentages have been recomputed for comparative purposes, using 1925 as 100%.

[fol. 498] EXHIBIT E

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Service Furnished by Said Company to Its Patrons Throughout the State of Ohio

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the proceedings heretofore had herein.

The Commission, being fully advised in the premises, and a majority thereof having this day made and filed in writing their findings of fact, to which findings has also been entered the dissent of the minority of the Commission, and coming now first to consider the protests filed against the tentative valuation certified herein January 10, 1931, finds that said tentative valuation should be modified, amended and corrected in the following respects, to-wit:

There should be deducted from the property the sum of $2,714,788, representing an allocation of property to exclusive interstate service;

That the sum of $325,247 should be deducted from the allowance for right of way;

That the undistributed construction expenditures set forth in said tentative valuation should be reduced by the sum of $3,391,674;

[fol. 498a] That the item of $3,592,040 allowed in the tentative valuation as going concern value should be eliminated as a separate item in the valuation, and

That the allowance for working capital including materials and supplies included in said tentative valuation should be reduced by the sum of $551,498.

The Commission further finds that in all other respects the protests to said tentative valuation by the parties hereto should be and hereby the same are disallowed. It is, therefore,

Ordered, That the following be and hereby the same is found to be and adopted as the final valuation of all of the several kinds and classes of property and of the property as of a whole, of The Ohio Bell Telephone Company as of June 30, 1925 used and useful in the furnishing of service in the State of Ohio; the intrastate portion thereof being 97.18448 percent of each kind or class of property, or Reproduction Value of the whole $107,934,197, Present Value $93,707,488, and the interstate portion thereof, 2.81552 percent, or Reproduction Value $3,126,949, Present Value $2,714,788;

(Here follows one photo, side folio 499.)

Line No.	Acct. No.	Description	Reproduction Value	Percent Condition		Present Value
1.	207	Right of way	$1,943,084		100.00	$1,943,084
2.	211	Land	3,256,854		100.00	3,256,854
3.	212	Buildings	7,788,774		90.18	7,023,994
4.		Total Land and Buildings	$11,045,628	Ave.	93.08	$10,280,778
5.	221	Central Office Telephone Equipment	17,199,740		85.75	14,748,777
6.	229	Other Equipment of Central Offices	634,689		84.72	537,709
7.		Total Central Office Equipment	$17,834,429	Ave.	85.71	$15,286,486
8.	231	Station Apparatus	5,759,956		85.68	4,935,086
9.	232	Station Installations	2,034,423		80.00	1,627,538
10.	233	Interior Block Wires	83,881		80.00	67,105
11.	234	Private Branch Exchanges	3,384,995		85.75	2,902,633
12.	236	Booths and Special Fittings	167,201		80.00	133,761
13.		Total Station Equipment	$11,430,456	Ave.	84.56	$9,666,123
14.	241	Exchange Pole Lines	9,412,432		72.93	6,864,844
15.	242	Exchange Aerial Cable	8,055,194		87.71	7,064,968
16.	243	Exchange Aerial Wire	4,556,220		76.72	3,495,338
17.	244	Exchange Underground Conduit	9,386,032		96.00	8,916,730
18.	245	Exchange Underground Cable	9,810,730		91.85	9,011,082
19.	246	Exchange Submarine Cable	19,730		96.00	18,744
20.		Total Exchange Lines	$41,240,338	Ave.	85.77	$35,371,706
21.	251	Toll Pole Lines	6,108,489		80.93	4,943,325
22.	252	Toll Aerial Cable	536,254		91.50	490,692
23.	253	Toll Aerial Wire	3,842,664		91.78	3,526,696
24.	254	Toll Underground Conduit	30,493		95.00	28,968
25.	255	Toll Underground Cable	421,257		91.64	386,032
26.	256	Toll Submarine Cable	12,652		95.00	12,019
27.		Total Toll Lines	$10,951,809	Ave.	85.72	$9,387,732
28.	261	Office Furniture and Fixtures	624,244		85.00	530,607
29.	263	General Store Equipment	18,181		85.00	15,454
30.	264	General Stable and Garage Equipment	652,331		75.00	489,248
31.	265	General Tools and Implements	422,051		70.00	295,436
32.		Total General Equipment	$1,716,807	Ave.	77.51	$1,330,745
33.		Total Physical Property	$95,462,301	Ave.	86.49	$82,566,604
		Undistributed Construction Expenditures:				
34.		Omissions 1%	814,570	Ave.	85.58	697,120
35.		Interest During Construction..... 6%	5,727,730	"	86.49	4,953,996
36.		Engineering 5%	3,243,948	"	85.67	2,779,056
37.		Taxes During Construction..... 1%	954,625	"	86.49	825,666
38.		General Expenses 2%	1,909,230	"	86.49	1,651,332
39.		Total Undistributed Construction Expenditures...	$12,650,143	Ave.	86.22	$10,907,170
40.		Total Fixed Capital	$108,112,644	Ave.	86.46	$93,473,774
41.		Working Capital Including Materials & Supplies.....	2,948,502		100.00	2,948,502
42.		Total Property Used and Useful.....	$111,061,146	Ave.	86.82	$96,422,276
43.		Less,— Interstate Proportion of Total.....2.81553%	3,126,949	"	86.82	2,714,788
44.		Intrastate Property Used and Useful...97.18447%	$107,934,197	Ave.	86.82	$93,707,488

[fol. 500] And the Commission coming now to adjust said final intrastate valuation to the succeeding years, finds:

That as of December 31, 1926 the value of the aforesaid property is the sum of $101,767,774;

That as of December 31, 1927 the value of the said property is the sum of $111,036,622;

That as of December 31, 1928 the value of the said property is the sum of $122,417,735;

That as of December 31, 1929 the value of the said property is the sum of $134,765,576;

That as of December 31, 1930 the value of the said property is the sum of $145,683,047;

That as of December 31, 1931 the value of the said property is the sum of $145,271,663;

That as of December 31, 1932 the value of the said property is the sum of $133,625,655; and

That as of November 30, 1933 the value of the said property is the sum of $126,250,206.

And the Commission coming now to consider the reasonableness and justness of the rates, charges, tolls and rentals of said The Ohio Bell Telephone Company for the furnishing of intrastate service in the State of Ohio and with due regard to the value of all the property of said public utility actually used and useful for the convenience of the public in intrastate service as herein ascertained and determined, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount, (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right; and exclusive of any value added thereto by reason of a monopoly or merger and to the necessity of making reservation out of the income for surplus, depreciation and contingencies, and all such other matters as may be proper, according to the facts in this case, finds:

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1925 its actual revenues were the sum of $29,860,205, its reasonable expenses and [fol. 501] deductions the sum of $21,478,034, and its actual net income the sum of $8,382,171, which net income equalled an annual earning at the rate of 8.95% upon the value of the property used and useful for the furnishing of such service:

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1926 its actual revenues were the sum of $32,621,359, its reasonable expenses and deductions the sum of $23,456,132, and its actual net income the sum of $9,165,227, which net income equalled an annual earning at the rate of 9.01% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1927 its actual revenues were the sum of $35,001,386, its reasonable expenses and deductions the sum of $25,242,219, and its actual net income the sum of $9,759,167, which net income equalled an annual earning at the rate of 8.79% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1928 its actual revenues were the sum of $38,008,645, its reasonable expenses and deductions the sum of $27,514,103, and its actual net income the sum of $10,494,542, which net income equalled an annual earning at the rate of 8.57% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1929 its actual revenues were the sum of $41,849,739, its reasonable expenses and deductions the sum of $30,952,802, and its actual net income the sum of $10,896,937, which net income equalled an annual earning at the rate of 8.09% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1930 its actual revenues were the sum of $42,405,306, its reasonable expenses and deductions the sum of $31,454,219, and its actual net income the sum of $10,951,087, which net income equalled an annual earning at the rate of 7.52% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1931 its actual rev- [fol. 502] enues were the sum of $40,884,990, its reasonable expenses and deductions the sum of $29,782,572, and its actual net income the sum of $11,102,418, which net income equalled an annual earning at the rate of 7.64% upon the value of the property used and useful for the furnishing of such service;

That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1932 its actual revenues were the sum of $35,745,328, its reasonable expenses and deductions the sum of $27,487,582, and its actual net income the sum of $8,257,746, which net income equalled an annual earning at the rate of 6.18% upon the value of the property used and useful for the furnishing of such service; That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1933 its actual revenues were the sum of $31,065,906, its reasonable expenses and deductions the sum of $24,106,674, and its actual net income the sum of $6,959,232, which net income equalled an annual earning at the rate of 5.51% upon the value of the property used and useful for the furnishing of such service.

That for the said period a reasonable annual rate of return to be earned by the company upon the aforesaid valuations of its said property would be for the years 1925 to 1929, inclusive, 7% per annum; 1930 to 1931, 6.5% per annum; and for the years 1932 and 1933 5.5% per annum; that the just and reasonable net income to be derived by the company from its intrastate operations in the State of Ohio at the aforesaid rates of return would be the sums following, to-wit:

For the year 1925	$6,559,524
For the year 1926	$7,123,744
For the year 1927	$7,772,557
For the year 1928	$8,569,241
For the year 1929	$9,433,590
For the year 1930	$9,469,398
For the year 1931	$9,442,658
For the year 1932	$7,349,411
For the year 1933	$6,959,232

That by reason of the aforesaid actual experience of the company The Ohio Bell Telephone Company in the period [fol. 503] 1925 to 1932, both inclusive, actually imposed, charged and collected from the subscribers for and users of its intrastate service within the State of Ohio the sum of $13,289,172 in excess of a fair return upon the value of its property actually used and useful in the furnishing of such service which said excess earning was collected in the following specific amounts in the following years, to-wit:

1925	$1,822,647
1926	$2,041,483
1927	$1,986,616
1928	$1,925,301
1929	$1,463,347
1930	$1,481,689
1931	$1,659,760
1932	$908,335

That the respondent, The Ohio Bell Telephone Company, has not sustained the burden imposed by law and proved to be reasonable and just its rates and proposed increased rates, charges, tolls and rentals for intrastate telephonic service in the State of Ohio now under consideration in this proceeding and the proceedings consolidated with it; that the respondent, The Ohio Bell Telephone Company, prepare and file with this Commission within a period of ninety days from the date of the service of a copy of this order new schedules to become effective as of June 30, 1925, prescribing rates, charges, tolls and rentals for all intrastate service furnished in the State of Ohio, the application of which to the service actually rendered will reduce its net income to that herein found to be fair and reasonable as of June 30, 1925, the date certain, and that the said respondent be required to refund to the patrons and subscribers paying the same the difference between the charges actually imposed, charged and collected for such intrastate service and the rates, charges, tolls and rentals for such service which may be established in pursuance to the findings hereinbefore set forth of the majority of the Commission, with interest as provided by law, or, in the event of the inability of the respondent to make such refunds to such patrons and subscribers, pay into the treasury of the political subdivision in which such service was rendered.

[fol. 504] It is, therefore,

Ordered, That said The Ohio Bell Telephone Company be and hereby it is notified, directed and required within ninety days from the date of the service of a copy of this order to prepare and file with this Commission new schedules prescribing rates, charges, tolls and rentals for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of the increased rates so charged and collected, which shall produce to the Company

net income not in excess of that herein found to be fair and reasonable as of June 30, 1925. It is, further

Ordered, That thereupon the said The Ohio Bell Telephone Company begin and prosecute with all diligence the repayment to its subscribers and patrons of the difference between the charges actually imposed and collected for the rendition of such service for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932, and the charges for such service set forth and prescribed by the aforesaid schedules, together with interest as provided by law.

Provided, however, that at the expiration of the period of one year from the date of the filing of such schedules all unrepaid excess revenues shall by said The Ohio Bell Telephone Company be paid into the treasury of the political subdivision in which such service was rendered. It is, further

Ordered, That jurisdiction be, and hereby is retained of this matter for the purpose of making such further or other orders as may be necessary and proper in this and the proceedings which have been consolidated with this proceeding, and all proceedings pending before this Commission to which The Ohio Bell Telephone Company is a party, not heretofore so consolidated are now here ordered to be consolidated in this proceeding.

The Public Utilities Commission of Ohio, Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 16th day of January, 1934.

A true copy. C. H. Knisley, Secretary.

[fol. 505] EXHIBIT F

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Serv-

ice Furnished by Said Company to Its Patrons Throughout the State of Ohio

Protest and Application and Petition of The Ohio Bell Telephone Company for a Rehearing of this Cause

The Ohio Bell Telephone Company (hereinafter referred to as "the company" or "the respondent") files this its protest against the findings and order of this Commission entered and rendered in this cause on the 16th day of January, 1934, and files this its application and petition for a rehearing of this cause, and shows that said findings and order are unreasonable and unlawful, for each of the following reasons and upon each of the following grounds:

1. The Commission erred in finding that the fair value of the respondent's intrastate property used and useful in the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
[fol. 506] June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of respondent's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

2. The Commission erred in finding that the net income of the respondent from its intrastate business in the State of Ohio available for return upon its said intrastate property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227

1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence in this case the Commission should have found that the respondent's net income from such business available for return upon such property, was not more than the following amounts in each of the following years:

[fol. 507]	1925	$5,956,673
	1926	6,667,946
	1927	7,202,348
	1928	8,205,623
	1929	8,153,508
	1930	8,017,157
	1931	8,065,229
	1932	7,038,876
	1933	6,160,952

3. The Commission erred in finding that the respondent's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz.:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

The rates of return so found by the Commission are higher than the rates of return actually earned by respondent upon such property, in that the Commission found the fair value of respondent's intrastate property in each of such years to be too low, as shown in para-

graph 1 hereof, and found the respondent's net income for each of such years to be substantially higher than it actually was, as shown in paragraph 2 hereof.

The Commission should have found, in accordance with the evidence in this case, that the rates of return to the respondent upon such property during each of said years was substantially less than the rate of return found by the Commission to be reasonable for each of said years, as hereinafter in paragraph 4 set forth.

[fol. 508] 4. The Commission erred in finding that the reasonable annual rates of return to the respondent upon the fair value of its said property were the following percentages for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence in this case that the rates of return at which the respondent was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively.

5. The Commission erred in taking into consideration and basing its said findings and order upon alleged material and labor cost prices and trends, obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence and as to which respondent had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of respondent's property as of June 30, 1925, thereupon de-

termined from the information above referred to and from Western Electric price trends, erroneously applied as specified in the next succeeding numbered paragraph, composite trend percentages applicable to respondent's entire intra- [fol. 509] state property, exclusive of right of way and working capital, which trend percentages commencing with June 30, 1925, and expressing the cost level of each succeeding year as a percentage of the cost level of each preceding year, respectively, were as follows:

1926	98.73 per cent
1927	96.97 per cent
1928	99.20 per cent
1929	101.45 per cent
1930	95.65 per cent
1931	93.95 per cent
1932	88.71 per cent
1933	102.96 per cent

The alleged facts so considered did not come from any official sources which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and the respondent had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of respondent's property. By reason of these facts the Commission denied the respondent a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing. The order of the Commission based upon such claimed proof deprives the respondent of its property without due process of law and denies to the respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The Commission erred in arriving at the fair value of the respondent's intrastate property for each of the years 1925 to 1933, inclusive, by giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied these price trends to all plant items purchased from Western Electric and included

in the respondent's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis. [fol. 510] The undisputed evidence in this case shows that the prices applied by the Commission in determining such trends are those of Western Electric Company for telephone apparatus only as distinguished from prices for lead covered cable and materials and supplies sold by the Western Electric Company to the respondent. The telephone apparatus included in the respondent's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by use of such Western Electric prices for telephone apparatus, obtained an alleged trend therefor, and then erroneously applied such trend, not only to the telephone apparatus in the respondent's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of the respondent's property and its finding in this respect is arbitrary and invalid.

7. The evidence in this case shows that the prices charged by Western Electric Company to the respondent for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further discloses that the earnings of Western Electric Company in its Bell business and in its business with the respondent were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including the respondent.

The appraisal introduced in evidence in this case by the respondent as of June 30, 1925, is based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by the company. Such appraisal is not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also includes [fol. 511] respondent's real estate at its market value and respondent's buildings at their fair reproduction cost.

All subsequent additions to respondent's property in-

clude items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by the company therefor.

The Commission erred in applying to the reproduction cost estimate so arrived at price trends of labor and material costs based upon the experience of manufacturers other than Western Electric Company and upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

8. The Commission, in fixing the fair value of respondent's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Company in November, 1930, under the following circumstances:

The evidence shows that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to respondent and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence shows that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's ac- [fol. 512] tion in rejecting this price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable. The finding of the Commission in rejecting the price restoration in 1930 and valuing respondent's property accordingly is in effect a decision that the test of reasonableness of Western Electric Company's earnings may only operate in one way, that

is, when prices are reduced, and may not operate when prices are increased.

9. The Commission erred in arriving at the fair value of respondent's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

10. The Commission erred in arriving at the fair value of respondent's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in respondent's books and in the evidence.

11. The Commission erred in finding that the Ohio Bell Telephone Company in the period 1925 to 1932, inclusive, imposed, charged and collected from its subscribers and the users of its intrastate service within the State of Ohio, the sum of $13,289,172 in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio and in finding and deciding that such excess earnings were collected in the following amounts in the following years, to-wit:

Date	Amount
1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335

[fol. 513] There was no evidence in the case which justified any finding by the Commission that any refunder should be made with respect to any of the years in question and no basis upon which the Commission's order for such a refunder could be sustained.

12. The Commission's order that The Ohio Bell Telephone Company should refund to its subscribers and the users of its intrastate service within the State of Ohio the sums specifically set forth in the last preceding paragraph

is illegal and void and is not based upon any evidence in the record which could justify the making of such order.

13. The Commission in its findings and order fixed the value of the respondent's property, its revenues and expenses and net income for each of the years in controversy and the net income which the respondent was entitled to earn under what the Commission found to be fair rates of return for each of the years. It then ordered the respondent, The Ohio Bell Telephone Company, to refund to its subscribers and telephone users the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years.

This Commission had no authority under any circumstances to require The Ohio Bell Telephone Company to make any refunder except with respect to rates effective under the Robinson and Pence laws (G. C. 614-20, 108 O. L. 1094 and 110 O. L. 366, respectively), in pursuance of bonds filed by respondent with this Commission and approved by it.

In only forty-six exchanges in the State of Ohio, out of a present total of 162 exchanges, have rates been put into effect either under the Robinson or Pence laws, and in such forty-six exchanges only a part of the entire rate schedules have been made effective under such laws. There is no possible way of determining from the order of the Commission how much of the refunders ordered to be made in any year is applicable to rates made effective in respond-
[fol. 514] ent's exchanges in the State of Ohio or with respect to its intrastate toll rates pursuant to the Robinson and Pence laws.

The Commission's order also requires the respondent to make refunders to its telephone subscribers and the users of its intrastate service in the State of Ohio on account of telephone rates lawfully established and collected by respondent pursuant to rate schedules filed with and approved by this Commission, that is to say, in cases where the respondent can be under no legal obligation to make any refunder.

The entire order for a refunder is therefore arbitrary, without any support in the evidence and void.

14. The respondent is denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the order of refunder made in this cause because of the following facts:

(a) In forty-six separate exchanges in the State of Ohio and for its toll service the respondent put rates into effect under the Robinson law or the Pence law pursuant to bonds duly filed by it with and approved by the Commission;

(b) The respondent was proceeding to show the fair value of its property and its revenues and expenses and net income in respect of each of such separate exchanges and in respect of its toll system to establish that the rates so put into effect were just and reasonable when the Commission, on its own motion in October, 1924, consolidated such Robinson and Pence law cases and instituted its own statewide investigation of the respondent's rates and charges. As stated in the Commission's order of January 16, 1934, the respondent "has always insisted upon the right to present and has offered to present, separate testimony with respect to them." (Robinson and Pence law cases);

(c) The respondent in this cause has repeatedly urged during the progress of the hearings that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its [fol. 515] intrastate service, its revenues and expenses, net income and rates of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and has demanded repeatedly and now demands the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under the Robinson and Pence laws were no more than just and reasonable;

(d) This Commission has definitely refused to permit such a showing to be made by the respondent and has refused to permit the introduction of evidence of the kind offered by the company with respect to the fair value of respondent's property, its revenues, expenses, net income and rates of return in such separate exchanges and in its toll business and has refused respondent a hearing in respect thereof.

The respondent has had no opportunity for a hearing and has had no hearing with respect to the refunders which have been ordered by this Commission, but on the contrary said refunders have been ordered arbitrarily and without any hearing and without any evidence upon which they can be sustained.

15. The refusal of the Commission to determine the amounts of refunders separately for each exchange and for respondent's intrastate toll system is in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

16. Under the law of Ohio no order for a refunder can properly or legally be made by this Commission except upon a finding that rates fixed for a given class of respondent's exchange service, or for a given exchange, or for respondent's intrastate toll service, under the Robinson or Pence laws, are unreasonable or excessive and except upon a definite order by the Commission directing the refunder of the excess portion of such rates. The Commission is thus required by the applicable statutes and under the terms of respondent's bonds executed in pursuance of such statutes to make a determination of the reasonableness or un-[fol. 516] reasonableness of the rates charged by respondent in each specific case where such rates have become effective under the Robinson and Pence laws.

Therefore, the order of the Commission made in this case does not comply with the requirements of the Ohio law and is not binding upon the respondent.

17. The order of the Commission requiring the company to file a schedule of rates as of June 30, 1925, which shall produce to the company net income not in excess of that found by the Commission in said order to be fair and reasonable as of June 30, 1925, is void and not binding upon respondent because

(a) The rates of respondent now and heretofore in effect, other than such rates as have been increased under the Robinson and Pence laws pursuant to bond filed with and approved by this Commission, are and at all times have been the duly and lawfully established rates which the company is entitled to charge, collect and receive for its services.

It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such services at any time prior to the effective date of a new order by this Commission or to order any refunder to be made with respect to such rates.

(b) The rate schedules ordered to be filed give effect to the net income which the Commission found the company to be entitled to earn for the year 1925, which net income is derived from all of the respondent's intrastate property in Ohio by means of which the public is being served in many exchange areas under rates not established pursuant to the Robinson and Pence laws. The Commission has not made any separation of the amounts to be refunded as between rates collected by the company pursuant to the Robinson and Pence laws, on the one hand, and on the other hand, rates not collected under such laws. There was no evidence before the Commission upon which any such separation could be made.

(c) The authority of the Commission, even in cases arising under the Robinson or Pence laws, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and to ordering the repayment of such excessive amounts. It can only fix rates [fol. 517] and require the filing of rate schedules which shall be prospectively operative.

18. Notwithstanding in said findings and order of the Commission it appears that for the year 1933 the respondent has earned at its existing rates no more than a fair return on even the unreasonably low value of its said intrastate property used and useful in the service of the public as found by the Commission, the Commission, in an attempt unlawfully to reduce the respondent's present existing rates for its service, has ordered the respondent to file schedules of reduced rates effective retroactively as of June 30, 1925, and thereafter until changed by the Commission's order. At such rates respondent's return from said property for the year 1934 would be reduced to a point substantially below that so found by the Commission to be fair for the year 1933 and substantially below such return for the year 1934 and thereafter and would admittedly result in the confiscation of the respondent's property in

violation of the Fourteenth Amendment to the Constitution of the United States; and this appears on the face of the Commission's finding and order.

19. The Commission erred in overruling the respondent's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and in failing in said order of January 16, 1934, to increase said value in the respects set forth in respondent's protest.

20. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the value of respondent's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value;

[fol. 518] (c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the respondent's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred by reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

21. The Commission erred in its finding of value by failing to give any consideration to or including any allowance for the going concern value of respondent's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of respondent's property and found that the element of going value amounted to $3,592,040. In said order it made an allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the

difference between an established plant and business, in operation and earning money, and the bare bones of the physical plant. In its present finding of fair value the Commission has not only eliminated any allowance for going value, but has reduced the fair value as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its order of January 16, 1934, no allowance whatever has been made for going concern value in any of the years, either as a separate element or otherwise in the valuation of respondent's physical property. The respondent is entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so deprives respondent of its property in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 519] 22. The Commission erred in arriving at the fair value of the respondent's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by the respondent during such respective years in telephone property in process of construction, viz:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

The respondent was entitled to have included in the fair value of its intrastate property as found by the Commission the above amounts for each of the above years, because the sums so invested by it in property in process of construction, being devoted to the public service, the respondent was constitutionally entitled to earn a return upon such property.

23. The Commission erred in arriving at the fair value of respondent's said intrastate property in disallowing for

each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant: right of way, buildings, and also material values in switchboards, installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

24. The Commission erred in arriving at the fair value of respondent's said intrastate property, in limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and in excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

[fol. 520] 25. The Commission erred in arriving at the fair value of respondent's intrastate property, in allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of the respondent.

26. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of the respondent found by the Commission for each of the years 1925 to 1933, inclusive.

27. The Commission erred in finding that the actual existing depreciation in the respondent's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of respondent's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own finding of fair value a sum on account of the existing depreciation in the respondent's intrastate property more than $4,000,000 in excess of any sum justified by the evidence in this case.

28. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of respondent's intrastate property by deducting amounts on account of existing depreciation in such property largely

in excess of the actual existing depreciation therein, as shown by the evidence.

29. The Commission erroneously disallowed and refused to include in respondent's reasonable and necessary operating expenses the following sums of money for each of the years 1925 to 1933, inclusive, representing part of the annual expense of depreciation of the intrastate portion of respondent's depreciable property:

[fol. 521]

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

30. The Commission erroneously refused to permit a deduction from respondent's gross income of the following sums of money for each of the years 1925 to 1933, inclusive, representing the annual expense of amortization of the intrastate portion of respondent's landed capital:

1925	$57,506
1926	58,976
1927	58,536
1928	60,471
1929	47,347
1930	51,776
1931	50,339
1932	47,862

31. The Commission erred in allowing in respondent's said operating expenses for each of the years 1925 to 1933 annual expense of depreciation at the rate of only four per cent per annum of respondent's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of respondent's intrastate property as charged on its books:

1925	$4,972,486
1926	5,430,897
1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

[fol. 522] 32. Respondent's evidence as to its annual depreciation and amortization expenses, testified to by its own engineers, took into consideration the service life and salvage of the several classes of respondent's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933 inclusive for respondent's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting, in accordance with the Uniform System of Accounts, prescribed by the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Commission Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General Code. The Commission also erred in disallowing entirely the company's expense of amortization of landed capital.

33. The amounts determined in said finding and order of January 16, 1934, as representing the proper annual expense of depreciation are not only too low by reason of the fact that said percentages so applied in each year are too low, but also because such percentages have been applied to alleged property values which are in themselves too low.

34. The Commission erroneously refused to permit the deduction from respondent's gross income of the following sums of money for the years 1925 to 1933, respectively, representing sums paid by respondent to the American Telephone & Telegraph Company on account of license contract services rendered by said company to respondent, viz:

[fol. 523]

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

35. The Commission erred in disallowing as a part of respondent's operating expenses for each of the years 1930 to 1932, inclusive, the following sums representing amounts paid by respondent to the Western Electric Company for materials charged to maintenance or other expense accounts:

1930	$ 22,335
1931	148,020
1932	112,722

Said sums represent the amount of a price increase made by Western Electric Company on November 1, 1930, to which the Commission refused to give effect.

36. The Commission erred in failing to make adjustments in respondent's expenses by way of increases in its Federal Income Tax because of the foregoing disallowances in paragraphs 29, 30, 34 and 35 set forth.

37. The reproduction cost new of the property of said company used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to-wit:

[fol. 524]

Account No.	
207	Right of Way.
211	Land.
212	Other Equipment of Central Offices.

232 Station Installations.
241 Exchange Pole Lines.
242 Exchange Aerial Cable.
243 Exchange Aerial Wire.
244 Exchange Underground Conduit.
245 Exchange Underground Cable.
251 Toll Pole Lines.
252 Toll Aerial Cable.
253 Toll Aerial Wire.
254 Toll Underground Conduit.
255 Toll Underground Cable.
Undistributed Construction Costs and Expenditures.
Going Concern Value.
Working Capital, Including Supplies.
Construction Work in Progress.

38. The fair value of the property of said company used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and, specifically, as to each and all classes of property.

39. The Commission erred in undervaluing the intrastate property of the respondent, in increasing the revenues, decreasing the expenses and increasing the net income, in respect of the same for each of said years, respectively, contrary to the law and the evidence.

40. In each and all of the foregoing respects complained of the said findings, proceedings, acts and orders of the Commission are and were unjust, unreasonable, in violation of the applicable Ohio statutes, confiscatory and unlawful and will, if enforced, result in the confiscation of respondent's property and will deprive respondent of its [fol. 525] property without due process of law and deny respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, respondent prays that this protest, application and petition for rehearing be granted and respondent

granted a rehearing in respect of each and all of the matters herein complained of; that in every case in which respondent's rates have become effective pursuant to bonds filed under the Robinson and Pence laws respondent be permitted to introduce evidence before this Commission as to the fair value of respondent's intrastate property, its revenues, expenses and net income, separately; and that the findings and order of the Commission entered in this cause on January 16, 1934, be vacated, set aside and held for naught.

Karl E. Burr, W. H. Thompson, Attorneys for The Ohio Bell Telephone Company.

(Oral Argument Requested.)

[fol. 526] EXHIBIT G

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Application and Request of the Ohio Bell Telephone Company

The respondent in the above entitled cause, The Ohio Bell Telephone Company, now requests the Commission:

1. To modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until changed or modified in accordance with law.

2. To permit the respondent, in accordance with the request heretofore made by it herein and hereby renewed by it, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the separate cases wherein the respondent is collecting rates pursuant to bond as provided in the so-called Robinson law and the so-called Pence law, as the same appear in 108 Ohio Laws at page 1094 and 110 Ohio Laws at page 366, respectively.

[fol. 527] 3. To afford the respondent an opportunity to examine, analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access.

The Ohio Bell Telephone Company, by Karl E. Burr, W. H. Thompson, Its Attorneys.

(Filed February 17, 1934.)

[fol. 528] EXHIBIT H

Before the Public Utilities Commission of Ohio

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of the Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Service Furnished by Said Company to Its Patrons Throughout the State of Ohio.

This day this matter came on for further consideration upon the application by The Ohio Bell Telephone Company asking, for the reasons and upon the grounds set forth therein, a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein January 16, 1934, and upon argument of counsel.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear in said application for such rehearing. It is, therefore,

Ordered, That the said application of said The Ohio Bell Telephone Company asking, for the reasons and upon the grounds set forth therein, a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein January 16, 1934, be, and hereby the same is, denied.

The Commission coming now to consider the application and request of said The Ohio Bell Telephone Company for the Commission

"To modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and [fol. 529] ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until changed or modified in accordance with law."

does hereby deny the same.

And the Commission on consideration of the application and request of said The Ohio Bell Telephone Company for the Commission

"To permit the respondent, in accordance with the request heretofore made by it herein and hereby renewed by it to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the separate cases wherein the respondent is collecting rates pursuant to bond as provided in the so-called Robinson law and the so-called Pence law, as the same appear in 108 Ohio Laws at page 1094 and 110 Ohio Laws at Page 366, respectively."

does hereby deny the same.

And the Commission on consideration of the application and request of said The Ohio Bell Telephone Company for the Commission

"To afford the respondent an opportunity to examine, analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of

January 16, 1934, referred to at Page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access."

does hereby deny the same; the Commission determined, on the valuation as of June 30, 1925 that portions of the increased rates collected by said Company were unreasonable and excessive,

To all of which orders of the Commission, said The Ohio Bell Telephone Company then excepted, here now excepts and its exceptions here are noted of record.

[fol. 530] It appearing that the Order of the Commission heretofore entered herein as of January 16, 1934, failed to set forth the correct and entire order of the Commission as actually made, it is

Ordered, That the true and correct Order be entered herein as of and for the 16th day of January, 1934, nunc pro tunc as follows:

Ordered, That said The Ohio Bell Telephone Company, be and hereby it is notified, directed and required within ninety days from the date of the service of a copy of this order to prepare and file with this Commission new schedules prescribing rates, charges, tolls and rentals for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the State and for intrastate toll service collected under bond as provided by the acts of the General Assembly of Ohio, Vol. 108 O. L. P. 1094 and 110 O. L. P. 366, and by the provisions of Section 614-20 G. C., which shall produce to the Company net income not in excess of that herein found to be fair and reasonable as of June 30, 1925, in order that the Commission may thereupon determine the portion of the increased rates so collected which were unreasonable and in excess of the just and reasonable rates and charges for said service. It is, further

Ordered, That said The Ohio Bell Telephone Company be, and hereby it is notified, directed and required at the time of filing the aforementioned schedules to report to the Commission the amounts collected by it under bond from each exchange and for intrastate toll service, in excess of

the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which a schedule went into effect providing for an increased rate, and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each [fol. 531] year from 1925 to 1932, both inclusive, (a) the revenue produced by the rates and charges collected by the company; (b) the revenue that would have been produced by the rates and charges as set forth in the schedules herein ordered to be filed; (c) net reduction in revenues; (d) amount collected by the Company under bond in the various proceedings herein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedule herein ordered to be filed. It is, further

Ordered, That the Company at the same time submit to the Commission the original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each, before the protested advances in rates. It is, further

Ordered, That The Ohio Bell Telephone Company begin and prosecute with all diligence the repayment to its subscribers and patrons entitled thereto, as provided by law, such portion of increased rates, joint rates, tolls, classifications, charges or rentals, collected by said utility from the effective date of said increases and for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 inclusive, found and determined to have been unreasonable or excessive with interest at the rate of six (6) per centum per annum from the date of payment by the consumer to the date of repayment by the utility.

Provided, however, that if any such money ordered by the Commission to be repaid shall not have been claimed by the corporation or persons entitled thereto in one year from the time the same shall become due and payable in accordance with the order of this Commission, all such money shall be paid to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund and in such amounts and in such manner as the Commission may order. It is, further

Ordered, That the schedules of rates, charges, tolls and rentals for all classes of intrastate service furnished in the [fol. 532] State of Ohio as hereinafter found and determined to be just and reasonable be substituted for the schedules of said Company now on file and under investigation in this proceeding and proceedings consolidated herewith. It is, further

Ordered, That jurisdiction be, and hereby is retained in this matter for the purpose of making such further or other orders as may be necessary and proper in this and the proceedings which have been consolidated with this proceeding; and all proceedings pending before this Commission to which the Ohio Bell Telephone Company is a party, affecting rates and charges to be made by this Company for schedule services, not heretofore consolidated are now here ordered to be consolidated in this proceeding.

To all of which orders said The Ohio Bell Telephone Company then excepted, here now excepts and its exceptions here are noted of record.

The Public Utilities Commission of Ohio, Charles F. Schaber, Frank W. Geiger, Commissioners.

Dated at Columbus, Ohio, This 1st day of March 1934.

A true copy. ——— ———, Secretary.

[fol. 533] EXHIBIT I

Before the Public Utilities Commission of Ohio

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Service Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Protest and Application and Petition of The Ohio Bell Telephone Company for a Rehearing of this Cause

Now comes The Ohio Bell Telephone Company (hereinafter referred to as "the company" or "the respondent"),

and this Commission having on the 1st day of March, 1934, attempted to correct, nunc pro tunc, its findings and order entered and rendered in this cause on the 16th day of January, 1934, the respondent files this its protest against said findings and order as so attempted to be corrected, and files this its application and petition for a rehearing of this cause and shows that said findings and orders, both as originally entered and as so corrected, are unreasonable and unlawful and that the Commission committed and made substantial and prejudicial errors against respondent, in each of the following respects, for each of the following reasons and upon each of the following grounds, towit:

1. The Commission erred in taking into consideration and and basing its said findings and orders upon alleged [fol. 534] material and labor cost prices and trends, obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence and as to which respondent had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of respondent's property as of June 30, 1925 thereupon determined from the information above referred to and from price trends of Western Electric Company, erroneously compiled and applied as shown in Paragraph No. 14 infra, composite price trend percentages applicable to respondent's entire intrastate property, exclusive of right of way and working capital, which price trend percentages commencing with June 30, 1925 and expressing the cost level of each succeeding year as a percentage of the cost level of each preceding year, respectively, were as follows:

1926	98.73 per cent
1927	96.97 per cent
1928	99.20 per cent
1929	101.45 per cent
1930	95.65 per cent
1931	93.95 per cent
1932	88.71 per cent
1933	102.96 per cent

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced [fol. 535] in evidence, and respondent had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of respondent's property. By reason of these facts the Commission denied respondent a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing. In the application and request filed by respondent with the Commission on the 17th day of February, 1934, the Commission was specifically requested

"to afford the respondent an opportunity to examine and analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access."

The Commission after argument and a full hearing on said request made by respondent, denied the same in said order of March 1st, 1934. The fair value of respondent's property has thus been fixed and determined upon information and claimed proof which respondent had no opportunity to examine, analyze, explain or rebut, and respondent has accordingly been denied a fair trial and hearing by the Commission. The findings and orders of the Commission based upon such claimed proof deprive respondent of

its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The Commission erred in said findings and orders in requiring respondent to file, effective retroactively as of June 30, 1925 and thereafter until changed by the order of the Commission, such schedules of reduced rates for respondent's intrastate service as should produce net income [fol. 536] not in excess of the amount found by the Commission to be fair and reasonable as of that date. Said order in this respect, if enforced, will deprive respondent of its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The action of the Commission is an attempt to accomplish indirectly that which it can not directly do, viz.: to deprive respondent of the opportunity to earn a fair return upon the fair value of its property by reducing respondent's present rates, although they are now producing, as the Commission finds in said orders, no more than a fair return on the value of said property as found by the Commission.

(b) In said findings and orders the Commission found that for the year 1933 respondent was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that respondent's net income from said property for that year at its present rates did not exceed such a return. Any reduction in the respondent's present rates will necessarily reduce its net income below the amount found by the Commission to be fair.

Said findings and orders are also invalid and void because under the applicable Ohio statutes the Commission has no authority to require respondent to file schedules of rates which shall become effective retroactively.

3. The Commission erred in its said findings and orders in failing to fix and determine the present existing rates of respondent as the just and lawful rates to be charged, received and collected by respondent for the present and the

future. In the application and request filed by respondent with said Commission on the 17th day of February, 1934, respondent requested the Commission

"to modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its [fol. 537] services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until they are modified in accordance with law."

which application and request the Commission denied in its entry of March 1st, 1934, after a full hearing and argument.

The company-wide investigation in Cause No. 3307 could have had no lawful purpose other than to fix the future rates of respondent. The Commission, notwithstanding its finding that respondent was earning only a barely compensatory return for the year 1933, by the device of establishing rates retroactively effective has entered an order requiring a present reduction of rates with the result that said order if enforced will deprive respondent of its property without due process of law and will deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The action of the Commission in this respect is in direct violation of the laws of the State of Ohio from which its authority is granted, as under such laws the Commission has no authority to fix rates except for the future.

4. As heretofore shown, respondent's rates throughout the period in controversy in said cause were of two kinds:

(a) those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence laws;

(b) those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

The Commission having fixed the value of respondent's property, its revenues and expenses and net income for each of the years in controversy and the net income which

the respondent was entitled to earn under what the Commission found to be fair rates of return for each of the years, thereupon ordered respondent to refund to its subscribers [fol. 538] and patrons the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction as between rates collected pursuant to bond as hereinabove in subdivision (a) described, and rates not collected pursuant to bond, as hereinabove in subdivision (b) described.

The Commission had no authority under any circumstances to require respondent to make refunds except with respect to rates collected pursuant to bonds filed by respondent with this Commission and approved by it under the Robinson and Pence laws.

In only forty-five exchanges in the State of Ohio, out of a present total of 162 exchanges have rates been put into effect pursuant to bond and in many of such forty-five exchanges only a part of the entire rate schedules have been so made effective. The said orders of the Commission fail to state, and, there is no possible way of determining from said findings or orders how much of the refunds ordered to be made in any year is applicable to rates made effective in respondent's exchanges in the State of Ohio or with respect to its intrastate toll rates pursuant to bonds filed as aforesaid.

The entire order for refund is therefore arbitrary, without any support in the evidence and void.

5. The respondent was denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the order of refund made in this cause because of the following facts:

(a) As heretofore shown, prior to the 14th day of October, 1924, respondent or its predecessor had filed with the Commission pursuant to the provisions of the said Robinson and Pence Laws, a number of separate schedules of increased rates for its service in separate exchanges and a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by respondent with and approved by the Commission;

[fol. 539] (b) In each instance such schedule had been made the subject of a separate case on the dockets of the Commission and in each such case respondent was proceeding to show the fair value of its property and its revenues and expenses and net income, and that the rates so made effective pursuant to bond were just and reasonable, when the Commission, on its own motion on the said 14th day of October, 1924, instituted its own company wide investigation of respondent's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit";

(c) Respondent repeatedly urged during the progress of the hearings before the Commission that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues and expenses, net income and rates of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and demanded repeatedly the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under bonds were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the respondent "has always insisted upon the right to present and has offered to present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence laws;

(d) The Commission definitely refused to permit such a showing to be made by respondent and refused to permit the introduction of evidence of the kind offered by the respondent with respect to the fair value of its property, its revenues, expenses, net income and rates of return in such separate exchanges and in its toll system and refused respondent a hearing in respect thereof.

[fol. 540] The respondent had had no opportunity for a

hearing and had no hearing with respect to the refunds which have been ordered by the Commission, but on the contrary said refunds were ordered arbitrarily and without any hearing and without any evidence upon which they could be sustained.

6. The Commission erred in refusing to determine the amounts of refunds separately for each exchange and for respondent's intrastate toll system, hereinabove in paragraph 5 hereof, referred to, in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

7. Under the law of Ohio no order for refunds could properly or legally be made by the Commission except upon a finding that rates fixed for a given class of respondent's exchange service or for a given exchange or for respondent's intrastate toll service, collected pursuant to bond, were unreasonable or excessive, and except upon a definite order by the Commission directing the refund of the excess portion of such rates in each such separate case. The Commission was required by the applicable statutes and under the terms of respondent's bonds executed in pursuance of such statutes to make a determination of the reasonableness or unreasonableness of the rates charged by respondent in each specific case where such rates had become effective pursuant to bond as aforesaid.

Therefore, the said orders of the Commission made in this case do not comply with the requirements of the Ohio law and are void.

8. The said orders of the Commission requiring the respondent to file a schedule of rates as of June 30, 1925, which shall produce to the respondent net income not in excess of that found by the Commission in said orders to be fair and reasonable as of June 30, 1925, deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that:

[fol. 541] (a) The rates of respondent now and heretofore in effect, including such rates as have been increased under the Robinson and Pence laws pursuant to bond filed with and approved by the Commission, are and at all times

have been the duly and lawfully established rates which respondent is entitled to charge, collect and receive for its services. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such services at any time prior to the effective date of a new order by the Commission or to order any refund to be made with respect to such rates except as to rates effective pursuant to bonds.

(b) The rate schedules ordered to be filed give effect to the net income which the Commission found the respondent to be entitled to earn for the year 1925, which net income is derived from all of respondent's intrastate property in Ohio by means of which the public is being served in many exchange areas under rates not established pursuant to bond. The Commission has not made any separation of the amounts to be refunded as between rates collected by respondent pursuant to bonds on the one hand, and on the other hand, rates not collected under bond. There was no evidence before the Commission upon which any such separation could be made.

(c) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

9. The said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

(a) That the fair value of respondent's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

[fol. 542] June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047

December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) That the net income of respondent from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) That respondent's net income from said intrastate business equalled an annual earning upon the said value of respondent's intrastate property at the following rates for the following years:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

(d) That the reasonable rates of return which respondent was entitled to earn upon said intrastate property were the following percentages for the following years:

[fol. 543] 1925 to 1929, inclusive	7 per cent per annum
1930 to 1931 inclusive	6½ " " " "
1932 and 1933	5½ " " " "

(e) That respondent had collected during the period 1925 to 1932, inclusive, the sum of $13,289,172 in excess of a fair return upon the fair value of its intrastate property used and useful in the service of the public and that such excess

had been collected in the following amounts in the following years:

1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335

Upon such findings so made the Commission ordered respondent to refund to its subscribers and telephone users said sums of money above set out, aggregating the sum of $13,289,172, with interest thereon, and ordered respondent to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until the further order of the Commission.

The findings and orders of the Commission are arbitrary, unreasonable, invalid and confiscatory of respondent's property in that the fair value of respondent's said intrastate property in each of said years was largely in excess of the amounts so found by the Commission therefor; respondent's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by respondent were substantially lower than those which the Commission found respondent had earned in each of said years, and the return to which respondent was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, all as more particularly shown in paragraphs 10, 11, 12 and 13 infra.

[fol. 544] 10. The Commission erred in finding that the fair value of the respondent's intrastate property used and useful in the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576

Date	Value Found
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of respondent's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

11. The Commission erred in finding that the net income of the respondent from its intrastate business in the State of Ohio available for a return upon its said intrastate property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence the Commission should have found that respondent's net income from such business available [fol. 545] for a return upon such property, was not more than the following amounts in each of the following years:

1925	$5,956,673
1926	6,667,946
1927	7,202,348
1928	8,205,623
1929	8,153,593
1930	8,017,157
1931	8,065,229
1932	7,038,876
1933	6,160,952

12. The Commission erred in finding that respondent's net income from its intrastate business equalled an annual

earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

1925	8.95	per cent
1926	9.01	" "
1927	8.79	" "
1928	8.57	" "
1929	8.09	" "
1930	7.52	" "
1931	7.64	" "
1932	6.18	" "
1933	5.51	" "

The rates of return so found by the Commission are higher than the rates of return actually earned by respondent upon such property, in that, as shown by the evidence, the Commission found the fair value of respondent's intrastate property in each of such years to be too low as shown in paragraph 10 hereof, and found respondent's net income for each of such years to be substantially higher than it actually was, as shown in paragraph 11 hereof.

The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned upon such property during each of said years were substantially less than the rates of return found by the [fol. 546] Commission to be reasonable for said years, respectively, as hereinafter in paragraph 13 set forth.

13. The Commission erred in finding that respondent was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence that the rates of return at which respondent was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission have deprived respondent of

its property without due process of law and have denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

14. The Commission erred in arriving at the fair value of the respondent's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied such price trends to all plant items purchased from Western Electric Company and included in the respondent's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to respondent. The telephone apparatus included in respondent's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by the use of such Western Electric prices for telephone apparatus obtained an alleged trend therefor, [fol. 547] and then erroneously applied such trend, not only to the telephone apparatus in respondent's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of respondent's property, and its finding in this respect is arbitrary, and was unlawful and unreasonable.

15. The evidence showed that the prices charged by Western Electric Company to respondent for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of Western Electric Company in its Bell business and in its business with the respondent were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including respondent.

The appraisal introduced in evidence by respondent as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by respondent. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also included respondent's real estate at its market value and respondent's buildings at their fair value.

All subsequent additions to respondent's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by respondent therefor.

The Commission erred in determining the fair value of respondent's property by applying price trends of labor and material costs based upon the alleged experience of manufacturers other than Western Electric Company and [fol. 548] upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

16. The Commission, in fixing the fair value of respondent's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Company in November, 1930, under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to respondent and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent

and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of respondent's intrastate property for each of the years 1930, 1931, 1932 and 1933.

17. The Commission erred in arriving at the fair value of respondent's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

[fol. 549] 18. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in respondent's books and shown by the evidence.

The actual cost of respondent's intrastate property, including cash working capital and materials and supplies as allowed by the commission in said orders, were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

19. The Commission erred in finding that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected from the subscribers and patrons of its intrastate service within the State of Ohio, the sum of $13,289,172, in excess of a fair return upon the fair value of its property

actually used and useful in the service of the public in Ohio and in finding and deciding that such excess earnings had been collected in the following amounts in the following years, to-wit:

Date	Amount
1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335

[fol. 550] There was no evidence in the case which justified any finding by the Commission that any refund should be made with respect to any of the years in question and no basis upon which the Commission's order for such refund can be sustained.

20. The Commission's findings and orders that respondent refund to the subscribers and patrons of its intrastate service within the State of Ohio the sums specifically set forth in the last preceding paragraph are illegal and void and are not based upon any evidence in the record.

21. The Commission erred in overruling respondent's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and in failing in said orders of January 16, 1934 and March 1st, 1934, to increase said value in the respects set forth in respondent's protest.

22. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the value of respondent's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value;

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the respondent's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred by reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

[fol. 551] In each of the foregoing respects the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

23. The Commission erred in said findings and orders by failing to give any consideration to or including any allowance for the going concern value of respondent's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of respondent's property and found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. In said order it made an allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value and in its orders fixing the same, the Commission not only eliminated any allowance for going value, but reduced the fair value of respondent's intrastate property as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1st, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise in the valuation of respondent's property. The respondent was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived respondent of its property without due process of law, and de-

nied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

24. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the [fol. 552] following amounts of money invested by respondent during such respective years in telephone property in process of construction, viz:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

Respondent was entitled to have included in the fair value of its intrastate property the above amounts for each of the above years, because the sums so invested by it in property in process of construction, being devoted to the public service, respondent was constitutionally entitled to earn a return upon such property, and the Commission's failure to include such amounts deprived respondent of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

25. The Commission erred in arriving at the fair value of respondent's said intrastate property in disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant: right of way, buildings and also material values in switchboards, installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

26. The Commission erred in arriving at the fair value of respondent's said intrastate property, by limiting the allowance for the item of omissions for each of the years

1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

[fol. 553] 27. The Commission erred in arriving at the fair value of respondent's intrastate property, in allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of respondent, as shown by the evidence.

28. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of respondent found by the Commission for each of the years 1925 to 1933, inclusive.

29. The Commission erred in finding that the actual existing depreciation in respondent's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of respondent's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own findings of fair value a sum on account of the existing depreciation in respondent's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

30. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of respondent's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

31. The Commission erroneously disallowed and refused to include in respondent's reasonable and necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of respondent's depreciable property:

[fol. 554]

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

In so doing the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

32. The Commission erroneously refused to permit a reduction from respondent's gross income of the following sums of money for each of the years 1925 to 1933, inclusive, representing the annual expense of amortization of the intrastate portion of respondent's landed capital:

1925	$57,506
1926	58,976
1927	58,536
1928	60,471
1929	47,347
1930	51,776
1931	50,339
1932	47,862

33. The Commission erred in allowing in respondent's said operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of only four per cent per annum of respondent's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of respondent's intrastate property:

[fol. 555]

1925	$4,972,486
1926	5,430,897

1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

34. Respondent's evidence of its annual depreciation and amortization expense was based upon the service life and salvage of the several classes of respondent's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933, inclusive, for respondent's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting in accordance with the Uniform System of Accounts, prescribed by the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Commission Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General Code. The Commission also erred in disallowing entirely the company's expense of amortization of landed capital. The action of the Commission in so disallowing respondent's expense of amortization and reducing its expense of depreciation to four per cent per annum deprives respondent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

35. The amounts determined in said findings and orders as representing the proper annual expense of depreciation are not only too low by reason of the fact that such percentages so applied in each year are too low, but also because such percentages have been applied to alleged prop- [fol. 556] erty values which are in themselves too low.

36. The Commission erroneously refused to permit the deduction from respondent's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by respondent to the American Tele-

phone and Telegraph Company on account of license contract services rendered by said company to respondent, viz:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

Said sums of money were paid by respondent to said American Telephone and Telegraph Company for services actually rendered by the latter to respondent which services were required by respondent in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow respondent to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives respondent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

37. The Commission erred in failing to make adjustments in respondent's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 31, 32 and 36, supra.

38. The reproduction cost new of the property of respondent used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct [fol. 557] reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to-wit:

Account No.	
207	Right of Way.
211	Land.
212	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.

Account No.	
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.
255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital, Including Supplies.
	Construction Work in Progress.

39. The fair value of respondent's property used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to such property as a whole and, specifically, as to each and all classes of such property.

40. The Commission erred in undervaluing the intrastate property of respondent, in increasing its revenues, decreasing its expenses and increasing its net income for each of said years, respectively, contrary to the law and the evidence.

[fol. 558] 41. The Commission erred in said order of March 1, 1934, effective nunc pro tunc as of January 16, 1934, in ordering that respondent, within ninety days from the date of the service of a copy of said order, prepare and file with the Commission new schedules prescribing rates, charges, tolls, rentals, for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the state and for intrastate toll service collected under bond which shall produce to respondent net income not in excess of that therein found to be fair and reasonable as of June 30, 1925.

42. The Commission erred in said order of March 1, 1934, in ordering respondent at the time of filing the aforementioned schedules to report to the Commission the

amounts collected by respondent under bond from each exchange and for intrastate toll service, in excess of the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which a schedule went into effect providing for an increased rate; and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each year from 1925 to 1932, both inclusive, (a) the revenue produced by the rates and charges collected by respondent; (b) the revenue that would have been produced by the rates and charges as set forth in the schedules therein ordered to be filed; (c) the net reduction in revenues; (d) the amount collected by respondent under bond in the various proceedings therein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedule therein ordered to be filed.

43. The Commission erred in said order of March 1, 1934, in ordering that respondent submit to the Commission the [fol. 559] original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each, before the protested advances in rates.

44. The Commission erred in said order of March 1, 1934, in ordering respondent to begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by respondent from the effective dates thereof and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz.: $13,289,172.

45. The Commission erred in said order of March 1, 1934, in ordering that if any such moneys so ordered to be repaid shall not be claimed by the corporation or persons entitled thereto in one year from the time the same shall become due and payable, as ordered by the Commission, such money shall be paid to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund and in such amounts and in such manner as the Commission might order.

46. The Commission erred in said order of March 1, 1934, in ordering that the schedule of rates, charges, tolls and rentals for all classes of respondent's intrastate service furnished in the State of Ohio thereafter found and determined to be just and reasonable be substituted for the schedules of respondent on file and under investigation in said cause and in the proceedings consolidated therewith.

47. In each and all of the foregoing respects complained of the Commission erred in denying respondent's protests and applications and petitions for a rehearing of said cause and in failing to grant the same.

48. The Commission erred in denying respondent's application and request filed herein on the 17th day of February, 1934, (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by respondent for [fol. 560] its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by respondent for its services until changed or modified in accordance with law; (2) that the Commission pe-mit respondent in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where respondent was and is collecting rates pursuant to bond as provided in said Robinson and Pence Laws; and (3) that the Commission afford respondent an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January 16, 1934, which information was at no time exhibited to respondent or introduced in any open hearing or made a part of the record in said cause, and to which information respondent had never had access.

The action of the Commission in so denying said application and request has deprived respondent of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

49. In each and all of the foregoing respects complained of the said proceedings, acts, findings, and orders of the Commission affect materially the substantial rights of re-

spondent, are erroneous and prejudicial to it and are unlawful, unreasonable and are not sustained by sufficient evidence, are against the weight of the evidence and contrary to the evidence, and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of respondent's property and deprive it of its property without due process of law, and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 561] Wherefore, respondent prays that this protest, application and petition for rehearing be granted and respondent granted a rehearing in respect of each and all of the matters herein complained of; and that the findings and orders of the Commission entered in this cause on January 16, 1934, and on March 1, 1934, be vacated, set aside and held for naught.

The Ohio Bell Telephone Company, by Randolph Eide, Its President; Karl E. Burr, W. H. Thompson, Its Attorneys.

[fol. 562] EXHIBIT J

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the matter of the Investigation and Inquiry by the Public Utilities Commission of Ohio, upon its own motion, for the Determination (a) of the Fair Value of the property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Service furnished by said Company to its Patrons throughout the State of Ohio.

This day, this matter came on for further consideration with respect to the repayment and manner thereof by The Ohio Bell Telephone Company to its subscribers and patrons entitled thereto of the portion of increased rates, joint rates, toll, classifications, charges or rentals, collected by said utility for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932, inclusive, heretofore found and determined to have been unreasonable or excessive.

The Commission, being fully advised in the premises, finds:

That the excess charges collected under bond as provided by law in protesting exchanges and from intrastate toll services for 1925 and 1926 is found to be as follows:

	Exchange	Toll
1925	$1,137,195.00	$510,142.00
1926	1,637,314.00	234,399.00
1927	1,823,857.00	
1928	1,772,238.00	
1929	1,344,624.00	
1930	1,357,589.00	
1931	1,519,405.00	
1932	830,915.00	
Total	11,423,137.00	744,541.00

[fol. 563] That excess collections in the sum of $11,423,137.00 for exchange service and $744,541.00 for excess collections of intrastate toll services are refundable and subject to repayment by the company to the subscribers and patrons paying the same.

That said $11,423,137.00 excess collections are refundable to and subject to repayment to the subscribers and patrons of said utility of the various protesting exchanges to the extent of the amount, for each exchange and for the respective years aforesaid, as shown by the schedule hereto attached, identified as Schedule A, and made a part of this finding.

That the subscribers and patrons of said utility in said protesting exchanges paying said excess are entitled to have repayment made to them in such sum as is equal to the following per cent of the increase paid by them for the respective years aforesaid:

	Exchange			Toll		
1925	100.00000	Per	Cent	100.00000	Per	Cent
1926	100.00000	"	"	42.76667	"	"
1927	95.59084	"	"			
1928	88.52068	"	"			
1929	62.67606	"	"			
1930	62.12778	"	"			
1931	73.06314	"	"			
1932	46.34134	"	"			

That the repayment of excess intrastate toll service charges be made to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service.

That interest at the rate of 6 per cent per annum from the date of payment by the respective subscribers and patrons of said excess charges be paid to said subscribers and patrons on the amount so refundable and to be repaid to the date of repayment by the utility.

That such repayments shall be made at such times and in such amounts as the Commission shall order, and shall be paid promptly by said The Ohio Bell Telephone Company [fol. 564] to the subscribers and patrons entitled thereto, and in such manner as the Commission may prescribe, and if any such money ordered repaid shall not have been claimed by the subscribers and patrons entitled thereto within one year from the time the same shall become due and payable in accordance with the order of the Commission, all such unclaimed moneys be paid by said The Ohio Bell Telephone Company to the Treasurer of the county or other political sub-division in which such new schedule is effective for the benefits of its general fund, in such amounts and in such manner as the Commissison may order, and

That all findings and orders heretofore made pertaining to excessive charges and collections insofar as the same conflict with this finding shall be so modified as to conform to this finding. It is therefore,

Ordered, That a copy of this finding be served upon said The Ohio Bell Telephone Company and upon the Mayor of each muncipality named in the schedule hereto attached as notice to show cause, if any there be, at the office of the Commission in the State Office Building, Columbus, Ohio, Wednesday, August 1st, 1934, at ten o'clock A. M. Eastern Standard Time, why the above findings shall not be made final and an order issued putting said findings into effect and ordering repayment of the said excess charges by said utility in accordance with said finding, as provided by law.

The Public Utilities Commission of Ohio, —— ——, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 5th day of July, 1934,

—— ——, C. H. Knisley, Secretary.

SCHEDULE A

The Ohio Bell Telephone Company

Formal Case No. 3307

Proportion of Amounts Collected Under Exchange Service Bonds, as Reported by Company, Which Represent Excessive Return on Exchange Service as Found by Commission

Exchange	Effective Date	1925	1926	1927	1928	1929	1930	1931	1932	Total
Akron	8- 1-24	142,887	148,320	152,486	154,832	122,856	124,652	138,562	76,958	1,061,553
Alton	12-30-24	341	357	372	348	271	330	425	296	2,740
Bridgeport, Bellaire & Martins Ferry	9- 1-25	10,496	30,850	29,653	25,767	19,435	19,693	21,738	11,552	170,184
Canfield	10- 1-25	455	2,666	2,548	2,383	1,679	1,639	1,875	1,074	14,319
Canton	1-26-27	.....	.....	75,171	77,371	59,221	59,498	64,594	33,093	368,948
Cleveland	8- 1-24	86,717	92,976	94,788	91,036	71,411	73,539	84,378	50,287	645,132
Columbus	2-28-26	.....	374,673	445,663	426,841	314,927	311,957	354,116	198,739	2,426,916
Coshocton	9-29-26	.....	2,229	8,488	7,845	5,652	5,531	6,345	3,686	39,776
Dayton	8- 1-24	268,119	280,943	293,214	294,061	227,274	235,440	268,639	150,436	2,018,126
Dublin	12-30-24	943	947	950	919	715	754	897	568	6,693
East Palestine	12-30-24	3,551	3,542	3,475	3,325	2,365	2,338	2,656	1,539	22,791
Gahanna	12-30-24	1,280	1,168	1,102	1,011	792	875	1,025	618	7,871
Galloway	12-30-24	787	722	697	657	459	454	482	322	4,580
Girard	9-30-24	1,917	2,020	1,997	1,926	1,396	1,387	1,484	779	12,906
Groveport	12-30-24	2,012	1,798	1,733	1,626	1,195	1,240	1,355	835	11,794
Harrisburg	12-30-24	1,690	1,627	1,513	1,358	992	969	1,084	637	9,870
Hilliards	12-30-24	1,072	1,073	1,052	945	815	910	1,070	584	7,521
Kent	9- 1-25	4,753	14,724	14,348	13,912	10,328	10,557	12,039	7,006	87,667
Lancaster	1- 1-21	13,626	14,115	13,843	13,008	9,220	9,117	10,561	6,368	89,858
Lockbourne	12-30-24	731	627	552	489	258	221	217	125	3,210
London	9-29-26	.....	493	1,888	1,704	1,165	1,067	1,206	713	8,236
Marietta	7-31-24	19,753	19,946	18,678	16,987	12,133	12,304	13,311	7,696	120,808
Massillon	8- 1-24	39,540	41,322	41,769	39,611	29,696	29,124	31,297	16,852	269,211
Mentor	9-29-26	.....	162	649	593	419	435	602	375	3,235

Middletown	7-31-24	43,933	45,694	45,272	43,361	32,479	32,996	36,996	21,147	301,878
New Albany	12-30-24	1,013	981	925	834	610	628	736	400	6,127
Niles	9-30-24	6,119	6,000	5,523	5,320	3,996	3,989	4,143	2,131	37,221
Osborn	9-29-25	123	492	470	435	308	306	359	228	2,721
Pickerington	12-30-24	879	853	828	813	600	462	553	340	5,328
Piqua	9- 1-24	12,110	12,111	11,588	10,898	7,907	7,774	8,791	4,992	76,171
Reynoldsburg	12-30-24	1,678	1,644	1,639	1,583	1,228	1,298	1,476	890	11,436
Ripley	1-16-21	888	915	871	825	585	559	640	393	5,676
Sedalia	9-29-26	.....	32	125	111	77	75	82	43	545
South Charleston	12-30-24	934	935	909	817	589	544	601	351	5,680
South Solon	12-30-24	220	199	186	153	88	85	99	58	1,088
Springfield	4- 1-26	.....	39,723	51,138	47,835	36,534	36,713	40,337	21,564	273,844
Steubenville & Mingo Junction	9- 1-24	22,014	22,968	22,558	21,553	16,007	15,964	17,591	9,280	147,950
Toledo	8- 1-24	261,624	270,064	269,534	258,054	193,480	192,064	209,111	106,839	1,760,770
Toronto	12- 1-24	2,182	2,297	2,362	2,355	1,715	1,743	1,930	896	15,480
Washington Court House	9-29-26	.....	2,040	7,758	7,258	5,034	4,878	5,432	3,040	35,440
Worthington	12-30-24	5,307	5,184	5,209	5,305	4,018	4,347	5,204	3,231	37,805
Youngstown	6-20-24	177,511	187,887	190,333	185,173	144,695	149,113	165,366	83,954	1,284,032
Total		1,137,195	1,637,314	1,823,857	1,772,238	1,344,624	1,357,589	1,519,405	830,915	11,423,137
Refundable Proportion of Increase Collected		100.00000%	100.00000%	95.59084%	88.52068%	62.67606%	62.1277%	73.06314%	46.34134%	

[fol. 566] EXHIBIT K

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, upon its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Service Furnished by Said Company to Its Patrons Throughout the State of Ohio.

The Commission having under consideration the return, filed April 17, 1934, by The Ohio Bell Telephone Company, in response to the order of January 16, 1934 (which return is now available for examination at the offices of this Commission in the New State Office Building in the City of Columbus, Ohio), of two revisions of its existing schedules of rates, charges, tolls and rentals for each and every exchange operated in the State of Ohio, the application of which will produce to the company net income not in excess of that found by the Commission to be fair and reasonable; said return consisting of two statements, one, or the first, based upon the allocation of all excess earnings to both local exchange and intrastate toll service, and the second, based upon the allocation of all excess earnings to local exchange service, it is

Ordered, That said The Ohio Bell Telephone Company and the Mayor of each incorporated municipality in the State of Ohio wherein said company maintains and operates local exchange service, be, and hereby they are accorded opportunity to show cause, if any there be, in writing, by August first, 1934, why a further order shall not enter herein adopting, prescribing and substituting said first or said second suggested revision of existing schedules of [fol. 567] The Ohio Bell Telephone Company for the existing schedules of rates, charges, tolls and rentals which the Commission, in said finding and order of January 16, 1934, has found and determined to be excessive, unjust, unreasonable and unlawful, and notifying, directing and requir-

ing said The Ohio Bell Telephone Company thereupon to forthwith make the refunders heretofore ordered herein.

The Public Utilities Commission of Ohio, Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this ninth day of July, 1934.
A True Copy. C. H. Knisley, Secretary.

[fol. 568] EXHIBIT L

Before the PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, upon its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Application and Request of The Ohio Bell Telephone Company with Respect to The Commission's Order of July 5, 1934.

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that by its findings and order entered in this cause on the 16th day of January, 1934, and by its order, dated March 1, 1934, purporting to correct said order of January 16, 1934, the Commission ordered respondent to refund to its subscribers and patrons a portion of the rates collected by respondent for its intrastate telephone service, during the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172. with interest thereon.

[fol. 569] The respondent further shows the Commission that the amount of said refunds aggregating $13,289,172. was arrived at in said orders of January 16 and March 1, 1934, as follows:

Respondent's rates throughout the period in controversy were of two kinds:

(a) Those filed with the Commission and, following the statutory protest and suspension, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws; and

(b) Those filed with the Commission and, in the absence of such protest and suspension, made effective without bond or other condition.

The Commission fixed the value of the respondent's property, its revenues, expenses and net income for each of the years in controversy, and the net income which respondent was entitled to earn under what the Commission found to be fair rates of return for each of such years. It thereupon in said orders of January 16 and March 1, 1934, ordered respondent to refund the entire difference between respondent's net income, so found, for its intrastate property, and the net income which the Commission found it should have earned thereon at fair rates of return during each of such years, without distinction as between rates collected pursuant to bond and rates not so collected.

By the Commission's order of July 5, 1934, the respondent is directed to refund $11,423,137. to its subscribers in exchanges where rates paid by them were made effective pursuant to bonds; and $744,541. to its toll users in respect of toll rates which were collected pursuant to bonds, in the aggregate the sum of $12,167,678.

[fol. 570] The order of July 5, 1934, requires refunds to be made by respondent in an amount $1,121,494. less than the refunds required by the orders of January 16 and March 1, 1934, this sum being attributable to alleged excess earnings of respondent in exchanges where rates were not collected pursuant to bond.

In arriving at the amount of said refunds for each of said years it was necessary for the Commission to and it did make three apportionments and allocations:

1st. An apportionment and allocation of the alleged excessive earnings of respondent for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between rates collected pursuant to bond and those not so collected.

2nd. An apportionment and allocation of the refunds ordered to be made in the total sum of $12,167,678 between the respondent's exchanges and its toll system; and

3rd. An apportionment and allocation of the sum of $11,423,137, which is the amount respondent is required to refund in its several exchanges, among said several exchanges, all as listed on Schedule "A" attached to said order of July 5th.

Neither said order of July 5, 1934, nor the record in this case shows the information used in making these apportionments or the method by which they were made.

Respondent, The Ohio Bell Telephone Company, now requests the Commission:

1. To disclose to respondent and to afford it an opportunity to examine, analyze, explain and rebut the information upon which the Commission based each of said allocations and apportionments. If the Commission made said allocations and apportionments by a consideration of the [fol. 571] fair value of respondent's property, revenues, expenses and net income, then respondent demands the right to examine, analyze, explain and rebut the information so used by the Commission. If said apportionments and allocations were made without a consideration of such evidence, then respondent demands the right to have the method used by the Commission disclosed to it and the opportunity to show that the method used was, as respondent avers, improper. The information upon which the findings and order were based or the method of calculation used in the absence of such information, as the case may be, was not disclosed to respondent, or introduced in any hearing or made a part of the record.

2. To exhibit to respondent and afford respondent an opportunity to examine, analyze, explain and rebut the information used by the Commission in arriving at its findings and order that the subscribers and patrons of respondent, in exchanges and its toll system where rates were made effective under bond, were entitled to have repayments made to them in the sum equal to the following per cent of the increases paid by them in the following years, respectively:

	Exchange			Toll		
1925	100.00000	Per	cent	100.00000	Per	cent
1926	100.00000	"	"	42.76667	"	"
1927	95.59084	"	"	.....	"	"
1928	88.52068	"	"	.....	"	"
1929	62.67606	"	"	.....	"	"
1930	62.12778	"	"	.....	"	"
1931	73.06314	"	"	.....	"	"
1932	46.34134	"	"	.....	"	"

If the Commission determined said percentages by a consideration of the fair value of the respondent's property, revenues, expenses and net income, then the respond- [fol. 572] ent demands the right to examine, analyze, explain and rebut the information so used by the Commission. If the Commission determined the said percentages without consideration of such information, then respondent demands the right to have the method used by the Commission disclosed to it and the opportunity to show that the method used was, as respondent avers, improper. The information upon which the portion of the order was based or the method of calculation used in the absence of such information, as the case may be, was not disclosed to respondent or introduced in any hearing or made a part of the record.

3. To permit respondent, in accordance with the requests heretofore made by it and hereby renewed, to introduce evidence of the fair value of its property and as to its revenues, expenses and net income for each of the separate cases wherein the respondent is collecting rates pursuant to bond.

4. To disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut the information used by this Commission in arriving at its findings and order of January 16, 1934, consisting of alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence in any open hearing or made a part of the record in this case, and to which information respondent has never had access, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from

an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed; [fol. 573] (c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

5. Respondent requests that the Commission hold an open hearing, at which there shall be disclosed and introduced the information upon which the Commission based its order of July 5, 1934, and at which evidence shall be introduced as to the methods used by the Commission in apportioning and allocating the alleged excess earnings of respondent for the several years in controversy, as between rates collected pursuant to bond and those not so collected, and in apportioning and allocating the refunds which respondent is ordered to make, first, as between its exchanges and its toll system, and second, as among the various exchanges listed on Schedule A; that at such hearing the respondent shall have full opportunity to examine, analyze, explain and rebut the information upon which the Commission based its order of July 5, 1934, and the methods used by the Commission in making such apportionments and allocations—and an opportunity to introduce such evidence as respondent shall deem proper in order to meet any showing made at such hearing.

The Ohio Bell Telephone Company, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

July 31, 1934.

[fol. 574] EXHIBIT M

Before the PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, upon its Own Motion for the Determination (a) of the Fair Value or the Property of The Ohio Bell Telephone Company, Toll and Exchange (b) of the Just and Reasonable Rates and

(c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Application and Request of The Ohio Bell Telephone Company with Respect to The Commission's Order of July 9, 1934

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that in its order of January 16, 1934, in this cause this Commission made the following finding:

"That for the rendition of the respondent's intrastate service in the State of Ohio for the year 1933 its actual revenues were the sum of $31,065,906, its reasonable expenses and deductions the sum of $24,106,674, and its actual net income the sum of $6,959,232, which net income equalled an annual earning of 5.51% upon the value of the property used and useful for the furnishing of such service."

[fol. 575] That the Commission further found that a reasonable annual rate of return to be earned by the respondent upon its intrastate property for the year 1933 was 5.5% per annum. The Commission thus found that for the year 1933, the respondent earned and was at the end of said year earning at its existing rates no more than a fair return on even the minimum value of such property as fixed by the Commission and accordingly found that respondent had no excess net income for the year 1933.

In the order of July 9, 1934, the respondent is directed to show cause why its existing schedule of rates should not be reduced by putting into effect substantially lower schedules of rates.

The respondent, The Ohio Bell Telephone Company, now requests the Commission

To modify its findings and orders herein and all of them by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio, are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced.

Inasmuch as no evidence was received by the Commission as to the fair value of the respondent's property, or as

to its revenues, expenses and net income for any period subsequent to 1933, if the Commission proposes to establish or put into effect any new, revised or lower schedules of rates, in respect of respondent's intrastate service, in its several exchanges and its toll system, the respondent requests the Commission:

(1) to afford the respondent a hearing at which the respondent shall have the opportunity to introduce evidence as to the present fair value of its intrastate property by [fol. 576] separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence shall relate to the year 1934.

(2) to permit the respondent to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's order of July 9, 1934.

The respondent now shows the Commission, that, if permitted, it will prove that if either of said proposed revisions should be made effective the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000, and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

The Ohio Bell Telephone Company, by Randolph Eide, Its President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

July 31, 1934.

[fol. 577] EXHIBIT N

Before the PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, upon its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services

Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Verified Return of the Ohio Bell Telephone Company to the Order to Show Cause Contained in the Commission's Findings and Order of July 5, 1934.

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows that this Commission in its findings and order of July 5, 1934, found that the subscribers and patrons of respondent in certain protesting exchanges and in respondent's intrastate toll system are entitled to have certain refunds made to them, all as set forth in said order of July 5, 1934, and ordered that the respondent show cause

"why the above findings shall not be made final and an order issued putting said findings into effect, and ordering repayment of the said excess charges by said utility in accordance with said finding, as provided by law."

[fol. 578] Respondent, The Ohio Bell Telephone Company, makes this, its return to said order to show cause, and shows the Commission that it has no right, power or authority to enter any further order requiring such refunds to be made or to enforce the orders already entered with respect thereto for each of the following reasons and causes:

1. Respondent's rates throughout the period in controversy in said cause were of two kinds:

(a) Those filed with the Commission and, following the statutory protest and suspension, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws;

(b) Those filed with the Commission and, in the absence of such protest and suspension, made effective without bond or other condition.

The Commission in its findings and orders of January 16 and March 1, 1934, having fixed the value of respondent's entire property, its revenues, expenses and net income for each of the years in controversy and the net income which respondent was entitled to earn under what the Commission found to be fair rates of return for each of the years,

thereupon ordered respondent to refund to its subscribers and patrons the sum of $13,289,172, being the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction as between rates collected pursuant to bond, and rates not so collected.

By the Commission's order of July 5, 1934, the respondent is directed to refund $11,423,137. to its subscribers paying the same in exchanges where rates paid by them were made effective pursuant to bonds; and $744,541. to its toll users in respect of toll rates which were collected pursuant to bonds; in the aggregate the sum of $12,167,678.

[fol. 579] In arriving at the amount of said refunds for each of said years it was necessary for the Commission to and it did make three apportionments and allocations:

1st. An apportionment and allocation of the alleged excessive earnings of respondent for the years 1925 to 1932, inclusive, in the sum of $13,289,172 as between rates collected pursuant to bond and those not so collected.

2nd. An apportionment and allocation of the refunds ordered to be made in the total sum of $12,167,678 as between the respondent's exchanges and its toll system; and

3rd. An apportionment and allocation of the sum of $11,423,137, which is the amount respondent is required to refund in its several exchanges, as between said several exchanges, all as listed on Schedule "A" attached to said order of July 5th.

Neither said order of July 5, 1934, nor the record in this case shows the information used in making these apportionments or the method by which they were made.

If the Commission made said apportionments and allocations upon a consideration of the fair value of respondent's property, its revenues, expenses and net income, it did so upon information which respondent had no opportunity to examine, analyze, explain or rebut. If the Commission made said apportionments and allocations without a consideration of the fair value of respondent's property, revenues, expenses and net income in respondent's separate exchanges and toll system, it did so on an arbitrary basis not supported by any evidence in the record and its findings are, therefore, void.

The Commission had no authority under any circumstances to require respondent to make refunds with respect to rates collected under bond without determining upon competent evidence the fair value of respondent's property, its revenues, expenses and net income for each of such exchanges separately and for its toll system, and the Com- [fol. 580] mission's refusal to permit respondent to introduce such evidence and the Commission's determination of the amount of such refunds without having received such evidence deprived respondent of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

2. The Commission has no right to enter any further order requiring respondent to make a refund or to enforce the orders already entered with respect thereto. The enforcement of any such order will result in depriving respondent of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States, for each of the following reasons:

(a) Prior to the 14th day of October, 1924, respondent or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence Laws, a number of separate schedules of increased rates for its service in separate exchanges and a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by respondent with and approved by the Commission;

(b) In each instance such schedule had been made the subject of a separate case on the dockets of the Commission and in each such case respondent was proceeding to show the fair value of its property and its revenues, expenses and net income, and that the rates so made effective pursuant to bond were just and reasonable, when the Commission, on its own motion on said 14th day of October, 1924, instituted its own company-wide investigation of respondent's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested

in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit";

[fol. 581] (c) Respondent repeatedly urged during the progress of the hearings before the Commission that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues, expenses, net income and fair rate of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and repeatedly demanded the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under bond were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the respondent "has always insisted upon the right to present and has offered to present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence laws;

(d) The Commission refused to permit the introduction of evidence with respect to the fair value of respondent's property, its revenues, expenses, net income and fair rate of return in such separate exchanges and in its toll system and denied respondent a hearing and the right to make a showing in respect thereof.

Said refunds were ordered arbitrarily and without any evidence upon which they can be sustained.

3. The Commission in its order of July 5, 1934, in determining the amount of refunds separately for each of the exchanges listed on Exhibit "A" attached thereto and for respondent's intrastate toll system refused to find or take into consideration the fair value of the respondent's property, its revenues, expenses and net earnings in each of said separate exchanges and in said toll system, and neglected and refused to find the portion of respondent's applicable rates, claimed by the Commission to be unreasonable or excessive, in direct violation of the applicable

Ohio statutes which are the measure of the Commission's authority in this respect.

[fol. 582] 4. The Commission was required by the applicable statutes and under the terms of respondent's bonds to make a determination of the reasonableness or unreasonableness of the rates charged by respondent in each specific case where such rates had become effective pursuant to bond.

Such determination could only be made by taking into consideration the fair value of respondent's property, its revenues, expenses and net income for each separate exchange and for its toll system. While the Commission has fixed the amount to be refunded by respondent for each exchange and for its toll system, it has done so without any determination based upon evidence that the rates collected pursuant to bond were unreasonable or excessive in any such exchange or in respondent's toll system.

5. There was no evidence in the case which justified any finding by the Commission that any refunds should be made with respect to any of the years in question, either with respect to rates collected in exchanges or in respondent's toll system, and there is therefore no basis upon which the Commission can make any order for a refund against respondent.

6. The Commission has no right to enter any further order based upon the calculations, apportionments and allocations set out in said findings and order of July 5, 1934, because the Commission apportioned the amount of the alleged excessive earnings of respondent attributable to its bonded and non-bonded rates, and apportioned the amount of the refunds which respondent is required to make as between its exchanges and toll system and as among the several exchanges listed on Schedule "A" attached to said order of July 5, 1934, upon some basis or method undisclosed to respondent and arbitrary because not based upon any evidence in the record. The Commission has no right to enter any further order with respect to such refunds or to enforce any order heretofore made by it with respect thereto, without determining separately for each exchange and for [fol. 583] the respondent's toll system, the fair value of the respondent's property, its revenues, expenses and net income.

7. The Commission has no right to enter any further order in this case with respect to such refunds or to attempt to enforce any order made without disclosing to respondent the information or method used in making the apportionments and allocations referred to in the last preceding paragraph of this return, and without giving the respondent an opportunity to examine, analyze, explain and rebut the same. Respondent now demands a disclosure of the information or method so used and a hearing with respect thereto before the Commission shall make any further order in this cause, with respect to refunds, or attempt to enforce the orders heretofore made.

8. The Commission's orders for refunds for each of the years in question are based upon an apportionment and allocation of the excess net income received and collected by respondent during such years as found by the Commission. The findings of excess net income for each year in turn depend upon the Commission's finding of the fair value of respondent's property for each year. The Commission's findings of fair value for each year subsequent to 1925 were based upon alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, which were not offered in evidence or otherwise disclosed and as to which respondent had no opportunity to cross-examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

[fol. 584] (e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission therefore has no right to enter any further order requiring respondent to make any refunds for any of the years 1926 to 1932, inclusive, or to enforce any order heretofore made with respect to such refunds without disclosing to the respondent the information heretofore repeatedly requested by respondent, upon which it

arrived at the alleged fair value of respondent's property for the years 1926 and thereafter.

9. In its order of July 5, 1934, the Commission has required respondent to refund the following percentages of the increases in rates collected by it under bond in its several exchanges and for its toll system for the following years:

	Exchange	Toll
1925	100.00000%	100.00000%
1926	100.00000%	42.76667%
1927	95.59084%	.....
1928	88.52068%	.....
1929	62.67606%	.....
1930	62.12778%	.....
1931	73.06314%	.....
1932	46.34134%	.....

The Commission has no right to enter any further order requiring such refunds to be made or to enforce the orders already entered with respect thereto. The enforcement of any such order will deprive respondent of its property without due process of law and deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for each of the following reasons:

(a) In arriving at said percentages the Commission refused to consider and determine for each exchange separately and for respondent's toll system the fair value of respondent's property, its revenues, expenses and net income, although respondent repeatedly demanded the right to offer such evidence;

[fol. 585] (b) The Commission has used an arbitrary method in ordering the refunds, viz: for each of the years in controversy a refund uniform for each exchange where rates were collected under bond, based upon a fixed percentage of the amount of the increases in rates collected under bond, which basis is wholly without support in the evidence;

(c) The Commission has not found that the rates collected under bond were unreasonable and excessive with respect to any exchange or with respect to respondent's toll system for any year. Without such a finding the Com-

mission cannot under the applicable Ohio statute order any refund;

(d) The amount of the refunds have been based upon alleged excessive net income of respondent in its total business apportioned and allocated as between bonded and non-bonded cases, between respondent's exchanges and its toll system and among its several exchanges by some method purely arbitrary in character and by the application of which the Commission seeks to avoid the necessity of determining that which the law requires it to determine, viz: whether rates established under bond were unreasonable or excessive in each separate bond case and if so to what extent.

10. The Commission cannot require respondent to repay unstated portions of its intrastate toll rates collected under bond "to the persons, subscribers and patrons paying the same, notwithstanding payments for such services were made by such persons, subscribers and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service." Respondent cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by respondent, make any refunds except to persons who are subscribers or patrons of respondent.

11. The Commission cannot enter any further order or enforce any order heretofore made requiring the repayment by respondent to its intrastate toll users of the sum of $510,142 for the year 1925 and the sum of $234,399 for the year 1926, without having made a determination of the fair value [fol. 586] of respondent's property, its revenues, expenses and net income in such intrastate toll system for said years respectively. It is apparent from the findings and order of July 5, 1934, that the Commission arbitrarily allocated a portion of the claimed excessive income of respondent to its toll patrons for two years only, upon some basis not disclosed to respondent and not sustained by any evidence in the record. There was no evidence in this case upon which the Commission could have based any finding that respondent had made any excessive earnings in its toll system. Respondent demanded the right to prove the fair value of its property used in rendering its intrastate toll service, and to show the revenues, expenses and net income

from such property for each year of the period under investigation. The Commission refused to receive such evidence. In view of these facts it can make no valid order requiring any refunds to be paid by respondent on account of toll rates collected under bond.

12. The Commission has no right to enter any further order with respect to such refunds, or to enforce any order heretofore made because, first, respondent has been denied a fair trial and hearing with respect to the fair value of its property, second, it has been denied a fair trial and hearing with respect to whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond, and, third, it has been denied any hearing with respect to the apportionment and allocation of alleged excessive income as between the bonded and non bonded rates and the apportionment of the refunds as between its exchanges and its toll system, and the apportionment of the refunds among the several exchanges. To enter any further order with respect to such refunds or to attempt to enforce any order heretofore entered will result in depriving respondent of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 587] 13. In addition to the reasons and causes hereinbefore assigned, showing why the Commission should not enter the order referred to in its findings and order of July 5, 1934, the respondent also specifically assigns all the grounds and reasons contained in a written "Protest and Application and Petition for a Rehearing of this Cause," which has been on this day filed herein, a copy of which said protest, marked Exhibit "A," is attached hereto, filed herewith and made a part of this return.*

Wherefore, respondent prays that the Commission enter no further order requiring payment by respondent of any

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*Said Exhibit A to this verified return, although physically attached to the verified return when filed with the Commission, is not reprinted here because it appears as Exhibit P to the Petition in Error, reference to which is hereby made.

refunds to any of its subscribers, and that the Commission shall not enforce or attempt to enforce any order heretofore made against respondent requiring the refund of any portion of rates collected by respondent.

The Ohio Bell Telephone Company, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

[fol. 588] State of Ohio,
County of Franklin, ss.

Randolph Eide, being first duly sworn upon his oath, says that he is the president of the respondent in the above cause, The Ohio Bell Telephone Company; that he makes this affidavit for and on behalf of this company and has the power so to do; that he has read the above and foregoing "Verified Return of The Ohio Bell Telephone Company to the Order to Show Cause Contained in the Commission's Findings and Order of July 5, 1934" and that the facts contained therein are true. Further affiant saith not.

Randolph Eide.

Sworn to before me and subscribed in my presence at Columbus, Ohio, this 31st day of July, 1934. O. T. Neal, Notary Public in and for Franklin County, Ohio. (Seal.)

[fol. 589] Exhibit O

Before the Public Utilities Commission of Ohio

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio upon its Own Motion for the Determination (a) of the Fair Value of the Property of the Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Verified Return of The Ohio Bell Telephone Company to the Order to Show Cause Contained in the Commission's Findings and Order of July 9, 1934.

On July 9, 1934, the Commission entered an order in this cause, requiring respondent, The Ohio Bell Telephone Company, to show cause,

"Why a further order should not enter herein adopting, prescribing and substituting said first or said second suggested revision of existing schedules of The Ohio Bell Telephone Company for the existing schedule of rates, charges, tolls and rentals which the Commission, in said finding and order of January 16, 1934, has found and determined to be excessive, unjust, unreasonable and unlawful, and notifying, directing and requiring said The Ohio Bell Telephone Company thereupon to forthwith make the refunders heretofore ordered."

[fol. 590] Respondent, The Ohio Bell Telephone Company, makes this, its return to said order to show cause and shows the Commission that it has no right, power or authority to enter any further order substituting either said first or said second "suggested revision of existing schedules" for the existing schedule of rates or to enforce the orders heretofore entered with respect to future rates, for each of the following reasons and causes:

1. The Commission in its findings and orders of January 16 and March 1, 1934, required respondent to file, effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission, such schedules of reduced rates for respondent's intrastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date.

The Commission in its findings and orders of January 16 and March 1, 1934, also required respondent to file certain rate and revenue data and estimates. These orders respondent complied with on April 17, 1934, under protest.

At the time respondent submitted to the Commission said "Rate and Revenue Data and Estimates" it advised the Commission in writing as follows:

"The Ohio Bell Telephone Company, respondent in the above entitled cause, herewith submits to your Commission 'Rate and Revenue Data and Estimates' required by your orders of January 16 and March 1, 1934. These data and estimates are furnished subject to the following reservations and conditions:

"1. Such data and estimates are not furnished voluntarily but under protest and solely for the purpose of avoiding the imposition of drastic and heavy penalties for noncompliance with such orders.

"2. Included in the data and estimates are statements by exchanges of monthly rates which, if applied to the respective services actually rendered by the company during the year 1925, will produce approximately the total net in- [fol. 591] come which the Commission found to be fair and reasonable for the year 1925. These data and estimates have been compiled on two bases—one applicable to both exchange and intrastate toll rates, and the other to exchange rates only. They are merely calculations made in order to accomplish the result required by the Commission, and are not proposed by the company as, and are not schedules of rates and are not filed or offered for filing.

"3. The rates referred to above, if applied to the services actually rendered by the company during each of the succeeding years 1926, 1927, 1928, 1929, 1930, 1931, 1932 and 1933, will not produce the net income which the Commission found to be reasonable for the company for each of such years, because, among other things, of variations in the kind and volume of the company's business and its revenues and expenses in each such year, and because of the differences in the net income found by the Commission to be reasonable for each of such years.

"In calculating the revenue effect of these hypothetical rates in 1925, the statement for that year covers the full calendar year although where rates were increased during 1925 the revenue effect of the hypothetiical rates as compared with the increased schedule has been calculated only for that portion of the year during which the increased rates were actually in effect. For the balance of the year the revenue effect, if any, has been based on the rates actually existing prior to the increase, and in cases where the hypothetical rate is higher than the actual rate in effect prior to the increase no revenue effect has been considered. Similarly, rate increases which became effective subsequent to 1925 were considered as they occurred and revenue effects calculated for subsequent years accordingly. These post-1925 increases constitute one of the reasons why the revenue

effect of the hypothetical rates is greater in subsequent years, as is evident from the tabulation of revenue effects by years for the particular exchanges where the increased rates became effective subsequent to January 1, 1925.

"The approximate annual amount collected under bond as reflected in the attached statements, includes the difference, if any, between the present schedule and the in-
[fol. 592] terim schedule, for those exchanges where dual service was furnished and where an interim schedule of monthly rates for Private Branch Exchange service to any station within the dual local service area was filed and approved.

"By furnishing such data and estimates The Ohio Bell Telephone Company does not admit that the Commission's orders of January 16 and March 1, 1934, are valid or enforcible. On the contrary, the company denies that the Commission had any right in this cause to order the company to make refunds for any of the years 1925 to 1932, inclusive, or to order that schedules of reduced rates be filed, retroactively effective, and insists, for the reasons heretofore stated in the company's protests and applications and petitions for a rehearing of this cause that said orders are invalid, unlawful and unreasonable."

The Commission can not lawfully require that either "said first or said second suggested revision of existing schedules" be adopted or substituted for the existing schedule of rates of the respondent, The Ohio Bell Telephone Company, for each of the following reasons:

(a) The action of the Commission is an attempt to accomplish indirectly that which it cannot do, viz: to deprive respondent of the opportunity to earn a fair return upon the fair value of its property by reducing respondent's present rates, although they are now producing as the Commission finds in said orders, no more than a fair return on the present value of said property as found by the Commission.

(b) In said findings and orders of January 16 and March 1, 1934 the Commission found that for the year 1933 respondent was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that respondent's net income from said property for that year at its present rates did

not exceed such a return. Any reduction in respondent's present rates will necessarily reduce its net income below the amount found by the Commission to be fair.

[fol. 593] (c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive respondent of its property without due process of law and deny respondent the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) Under the applicable Ohio statutes the Commission has no authority to require respondent to file schedules of rates which shall become effective retroactively.

In addition the hypothetical rates contained in the "Rate and Revenue Data and Estimates" which respondent was compelled to and did furnish to the Commission on April 17, 1934, cannot be made the basis of any order fixing rates for the future for respondent for each of the following reasons:

(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to respondent's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of July 5, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount of $1,647,337, or approximately $175,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

(b) The hypothetical rates contained in said "Rate and Revenue Data and Estimates," if they had been in effect during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper, for said years, respectively, either in its said orders of January 16 and March 1, 1934, or its order of July 5, 1934.

(c) Many of the decreases shown in the hypothetical rates in said "Rate and Revenue Data and Estimates" are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission [fol. 594] in its order of July 5, 1934, requires refunds to be made only with respect to rates made effective pursuant to

bond, said hypothetical rates can have no application to the orders of the Commission as now modified.

(d) The Commission has no right to fix rates for respondent's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of respondent for the year 1925. In determining rates for the present and future the Commission is required to consider the fair value of respondent's property, its revenues, expenses and net income for the most recent period available. In fact the Commission found that even on the low value of respondent's intrastate property as fixed by the Commission for the year 1933 it was earning only a barely compensatory return for that year and upon such finding made no order of refund against respondent for the year 1933. The Commission cannot ignore the testimony in the record and its own findings for the year 1933 in determining what are just and reasonable rates for respondent for its present and future services.

2. In the application and request filed by respondent with said Commission on the 17th day of February, 1934, respondent requested the Commission

"to modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until they are modified in accordance with law."

which application and request the Commission denied on March 1st, 1934.

On the 31st day of July, 1934, respondent again requested the Commission

[fol. 595] "To modify its findings and orders herein and all of them, by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio, are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced."

The Commission, notwithstanding its finding that respondent was earning only a barely compensatory return

for the year 1933, has entered an order requiring a present reduction of rates with the result that said order, if enforced, will deprive respondent of its property without due process of law and will deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Commission had no right to disregard the evidence in the record and its own findings which show that the company for the year 1933 was earning no more than a barely compensatory return.

On July 31, 1934, the respondent filed the following written request with the Commission:

"Inasmuch as no evidence was received by the Commission as to the fair value of the respondent's property, its revenues, expenses and net income for any period subsequent to 1933, if the Commission proposes to establish or put into effect any new, revised or lower schedules of rates, in respect of respondent's intrastate service, in its several exchanges and its toll system, the respondent requests the Commission:

(1) To afford the respondent a hearing at which the respondent shall have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence shall relate to the year 1934.

(2) To permit the respondent to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's order of July 9, 1934.

[fol. 596] The respondent now shows the Commission that, if permitted, it will prove that if either of said proposed revisions should be made effective the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000, and to permit it to earn less than 3½% per cent for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio."

It was the duty of the Commission under the evidence in this cause and its own findings to determine that the existing rates of respondent were no more than just and reason-

able rates to be charged for the present and future until modified in accordance with law, but if the Commission proposes to make any reduction in said existing rates, respondent is entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934.

The action of the Commission in this respect is in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

3. The said orders of the Commission requiring respondent to file a schedule of rates as of June 30, 1925 which shall produce to respondent net income not in excess of that found by the Commission in said orders to be fair and reasonable as of June 30, 1925 and the order of the Commission of July 9, 1934, ordering that respondent show cause why a further order shall not enter adopting, prescribing and substituting the so-called first or second "suggested revision of existing schedules" of respondent for the existing schedules of rates deprive respondent of its property without due process of law and deny it the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States, in that:

(a) The rates of respondent now and heretofore in effect, including such rates as have been increased under the Rob- [fol. 597] inson and Pence laws pursuant to bond, are and at all times have been the duly and lawfully established rates which respondent is entitled to charge for its service. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such services at any time prior to the effective date of a new order by the Commission.

(b) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

4. In the event it is the purpose of the Commission to amend, alter, reduce or modify respondent's existing rate schedule, the respondent now shows to the Commission that if either "said first or said second suggested revision of the existing schedules" is adopted, prescribed or substituted by the Commission for respondent's existing schedule of rates, that the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

5. If it is not the purpose of the Commission by said findings and order of July 9, 1934, to alter, modify, change or reduce the existing schedule of rates of respondent, then there is no lawful reason why any order shall be entered adopting, prescribing and substituting "said first or said second suggested revision of existing schedules" for respondent's existing schedules of rates. Under the applicable Ohio statutes, in order to require refunds the Commission must make a finding based upon proper evidence that the rates fixed for a given class of respondent's exchange service or for a given exchange or for respondent's intra-[fol. 598] state toll service collected pursuant to bond were unreasonable or excessive and directing the refund of the excess portion of the rates so collected. But the Commission in order to make a valid order of refund is not required to file or fix a schedule of rates nor is the respondent obligated under such circumstances to file any schedule of rates. If the Commission does not propose to reduce the present rate schedule of the respondent, which it can not do on the basis of its own findings in this cause, then neither of "said first or said second suggested revision of existing schedules" of respondent should be substituted for the existing rates and the Commission should make no order in this cause with respect to present and future rates of respondent except an order determining that the existing rate schedules of the respondent are no more than the just and lawful rates to be charged by it for its present and future services.

6. In addition to the reasons and causes hereinbefore assigned showing why the Commission should not enter the order referred to in its findings and order of July 9, 1934,

the respondent also specifically assigns all the grounds and reasons contained in its written "Protest and Application and Petition for a Rehearing of This Cause" which has been on this day filed herein, a copy of said protest marked Exhibit "A" is attached hereto and filed herewith and made a part of this return.*

Wherefore, respondent prays that the Commission enter no order substituting either "said first or said second suggested revision of existing schedules" for respondent's existing schedule of rates and requests the Commission that it enter an order in this cause determining that the present rate schedules of the respondent, The Ohio Bell Telephone Company, are no more than the just and reasonable rates [fol. 599] to be charged by respondent, until changed and modified in accordance with law.

The Ohio Bell Telephone Company, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

STATE OF OHIO,
County of Franklin, ss:

Randolph Eide, being first duly sworn upon his oath, says that he is the president of the respondent in the above cause, The Ohio Bell Telephone Company; that he makes this affidavit for and on behalf of this company and has the power so to do;-that he has read the above and foregoing "Verified Return of The Ohio Bell Telephone Company to the Order to Show Cause Contained in the Commission's Findings and Order of July 9, 1934" and that the facts contained therein are true. Further affiant saith not.

Randolph Eide

Sworn to before me and subscribed in my presence at Columbus, Ohio, this 31st day of July, 1934. O. T. Neal, Notary Public in and for Franklin County, Ohio. (Seal.)

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*Said Exhibit A to this verified return, although physicially attached to the verified return when filed with the Commission, is not reprinted here because it appears as Exhibit P to the Petition in Error, reference to which is hereby made.

[fol. 600] EXHIBIT P

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Protest and Application and Petition of The Ohio Bell Telephone Company for a Rehearing of This Cause

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that on the 16th day of January, 1934, the Commission made and entered findings and an order in this cause in respect of which the respondent on the 6th day of February, 1934, filed its protest and application and petition for a rehearing, and on the 17th day of February, 1934, its further application and request, both of which were overruled and denied by the Commission on March 1, 1934.

The Commission, in its said order entered on the first day of March, 1934, attempted to correct nunc pro tunc its said findings and order of January 16, 1934, in respect of which [fol. 601] order of March 1, 1934, the respondent, on the 9th day of March, 1934, filed its protest and application and petition for a rehearing, which was denied by the Commission on the same day.

This Commission made and entered two further findings and orders in said cause on the 5th and 9th days of July, 1934, supplementing and modifying its findings and orders of January 16 and March 1, 1934.

The respondent files this, its protest, against said findings and orders of July 5 and July 9, 1934, and each of them, and against said findings and orders of the Commission of January 16 and March 1, 1934, and each of them, as supplemented and modified by said findings and orders of July 5 and 9, 1934, and this, its application and petition for a rehearing of this cause.

The respondent shows that said findings and order, as originally entered on January 16, 1934, as attempted to be corrected by the findings and order of March 1, 1934, and as supplemented and modified by the findings and orders of July 5 and 9, 1934, are, and each of them is, unreasonable and unlawful, and that the Commission therein and thereby committed and made substantial and prejudicial errors against the respondent in each of the following respects, for each of the following reasons, and upon each of the following grounds, to-wit:

1. The Commission erred in taking into consideration and basing its said findings and orders upon alleged material and labor, cost prices and trends obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence and as to which respondent had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;
(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;
[fol. 602] (c) Building cost trends taken from the Engineering News Record;
(d) Labor cost trends from the same publication;
(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of respondent's property as of June 30, 1925, thereupon determined from the information above referred to and from price trends of Western Electric Company, erroneously compiled and applied as shown in Paragraph No. 14 infra, composite price trend percentages applicable to respondent's entire intrastate property, exclusive of right of way and working capital, which price trend percentages commencing with June 30, 1925 and expressing the cost level of each succeeding year as a percentage of the cost level of each preceding year, respectively, were as follows:

1926	98.73 per cent
1927	96.97 per cent
1928	99.20 per cent

1929	101.45 per cent
1930	95.65 per cent
1931	93.95 per cent
1932	88.71 per cent
1933	102.96 per cent

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and respondent had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of respondent's property. By reason of these facts the Commission denied respondent a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing. [fol. 603] In the application and request filed by respondent with the Commission on the 17th day of February, 1934, the Commission was specifically requested

"to afford the respondent an opportunity to examine and analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access."

The Commission after argument and a full hearing on said request made by respondent, denied the same in said order of March 1st, 1934.

The fair value of respondent's property has thus been fixed and determined upon information and claimed proof which respondent had no opportunity to examine, analyze, explain or rebut, and respondent has accordingly been denied a fair trial and hearing by the Commission.

On the 31st day of July, 1934, the respondent filed its written request asking the Commission

"To disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut the information used by this Commission in arriving at its findings and order of

January 16, 1934, consisting of alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence in any open hearing or made a part of the record in this case, and to which information respondent has never had access, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed; [fol. 604] (c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources."

The findings and orders of the Commission based upon such claimed proof deprive respondent of its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring respondent to file, effective retroactively, as of June 30, 1925, and thereafter until changed by the order of the Commission, such schedules of reduced rates for respondent's intrastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date.

The Commission in its findings and orders of January 16 and March 1, 1934, required respondent to file certain rate and revenue data and estimates. This order respondent complied with on April 17, 1934, under protest.

At the time respondent submitted to the Commission said "Rate and Revenue Data and Estimates" it advised the Commission in writing as follows:

"The Ohio Bell Telephone Company, respondent in the above entitled cause, herewith submits to your Commission 'Rate and Revenue Data and Estimates' required by your orders of January 16 and March 1, 1934. These data

and estimates are furnished subject to the following reservations and conditions:

"1. Such data and estimates are not furnished voluntarily but under protest and solely for the purpose of avoiding the imposition of drastic and heavy penalties for non-compliance with such orders.

[fol. 605] "2. Included in the data and estimates are statements by exchanges of monthly rates which, if applied to the respective services actually rendered by the company during the year 1925, will produce approximately the total net income which the Commission found to be fair and reasonable for the year 1925. These data and estimates have been compiled on two bases—one applicable to both exchange and intrastate toll rates, and the other to exchange rates only. They are merely calculations made in order to accomplish the result required by the Commission, and are not proposed by the company as, and are not schedules of rates and are not filed or offered for filing.

"3. The rates referred to above, if applied to the services actually rendered by the company during each of the succeeding years 1926, 1927, 1928, 1929, 1930, 1931, 1932 and 1933, will not produce the net income which the Commission found to be reasonable for the company for each of such years, because, among other things, of variations in the kind and volume of the company's business and its revenues and expenses in each such year, and because of the differences in the net income found by the Commission to be reasonable for each of such years.

"In calculating the revenue effect of these hypothetical rates in 1925, the statement for that year covers the full calendar year although where rates were increased during 1925 the revenue effect of the hypothetical rates as compared with the increased schedule has been calculated only for that portion of the year during which the increased rates were actually in effect. For the balance of the year the revenue effect, if any, has been based on the rates actually existing prior to the increase, and in cases where the hypothetical rate is higher than the actual rate in effect prior to the increase no revenue effect has been considered. Similarly, rate increases which became effective subsequent to 1925 were considered as they occurred and revenue effects calculated for subsequent years accordingly. These post-1925 increases constitute one of the reasons

why the revenue effect of the hypothetical rates is greater in subsequent years, as is evident from the tabulation of revenue effects by years for the particular exchanges [fol. 606] where the increased rates became effective subsequent to January 1, 1925.

"The approximate annual amount collected under bond as reflected in the attached statements, includes the difference, if any, between the present schedule and the interim schedule, for those exchanges where dual service was furnished and where an interim schedule of monthly rates for Private Branch Exchange service to any station within the dual local service area was filed and approved.

"4. By furnishing such data and estimates The Ohio Bell Telephone Company does not admit that the Commission's orders of January 16 and March 1, 1934, are valid or enforcible. On the contrary, the company denies that the Commission had any right in this cause to order the company to make refunds for any of the years 1925 to 1932, inclusive, or to order that schedules of reduced rates be filed, retroactively effective, and insists, for the reasons heretofore stated in the company's protests and applications and petitions for a rehearing of this cause, that said orders are invalid, unlawful and unreasonable."

Said orders in this respect, if enforced, will deprive respondent of its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States, in that:

(a) The action of the Commission is an attempt to accomplish indirectly that which it cannot directly do, viz.: to deprive respondent of the opportunity to earn a fair return upon the fair value of its property by reducing respondent's present rates, although they are now producing, as the Commission finds in said orders, no more than a fair return on the present value of said property as found by the Commission.

(b) In said findings and orders of January 16 and March 1, 1934 the Commission found that for the year 1933 respondent was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that respondent's net [fol. 607] income from said property for that year at its

present rates did not exceed such a return. Any reduction in respondent's present rates will necessarily reduce its net income below the amount found by the Commission to be fair.

(c) Under the applicable Ohio statutes the Commission has no authority to require respondent to file schedules of rates which shall become effective retroactively.

In addition the hypothetical rates contained in the "Rate and Revenue Data and Estimates" which respondent was compelled to and did furnish to the Commission on April 17, 1934, cannot be made the basis of any order fixing rates for the future for respondent for each of the following reasons:

(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to respondent's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of July 5, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount approximately $175,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

(b) The hypothetical rates contained in said "Rate and Revenue Data and Estimates," if they had been in effect during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper for said years respectively, either in its said orders of January 16 and March 1, 1934, or its order of July 5, 1934.

(c) Many of the decreases shown in the hypothetical rates in said "Rate and Revenue Data and Estimates" are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its order of July 5, 1934, requires refunds to be made only with respect to rates made effective pursuant to bond, [fol. 608] said hypothetical rates can have no application to the orders of the Commission as now modified.

(d) The Commission has no right to fix rates for respondent's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of respondent

for the year 1925. In determining rates for the present and future the Commission is required to consider the fair value of respondent's property, its revenues, expenses and net income for the most recent period available. In fact the Commission found that even on the low value of respondent's intrastate property as fixed by the Commission for the year 1933 it was earning only a barely compensatory return for that year and upon such finding made no order of refund against respondent for the year 1933. The Commission cannot ignore the evidence in the record and its own findings for the year 1933 in determining the just and reasonable rates for the respondent for its present and future services.

3. The Commission erred in its findings and orders in failing to continue existing rates of respondent in effect for the present and the future. In the application and request filed by respondent with said Commission on the 17th day of February, 1934, respondent requested the Commission

"to modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until they are modified in accordance with law."

which application and request the Commission denied in its entry of March 1st, 1934, after a full hearing and argument.

On the 31st day of July, 1934, respondent again requested the Commission

[fol. 609] "To modify its findings and orders herein and all of them by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio, are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced."

The Commission, notwithstanding its finding that respondent was earning no more than a barely compensatory return for the year 1933, has entered an order requir-

ing a present reduction of rates with the result that said order, if enforced, will deprive respondent of its property without due process of law and will deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Commission had no right to disregard the testimony in the record and its own findings which show that the company for the year 1933 was earning no more than a barely compensatory return.

On July 31, 1934, the respondent filed the following written request with the Commission:

"Inasmuch as no evidence was received by the Commission as to the fair value of the respondent's property, its revenues, expenses and net income for any period subsequent to 1933, if the Commission proposes to establish or put into effect any new, revised or lower schedule of rates, in respect of respondent's intrastate service, in its several exchanges and in its toll system, the respondent requests the Commission:

(1) to afford the respondent a hearing at which the respondent shall have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence shall relate to the year 1934.

(2) to permit the respondent to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's order of July 9, 1934.

[fol. 610] The respondent now shows the Commission that, if permitted, it will prove that if either of said proposed revisions should be made effective the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000, and to permit it to earn less than 3½ per cent for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio."

It was the duty of the Commission under the evidence in this cause and its own findings to determine that the existing rates of respondent were no more than just and lawful

rates to be charged, for the present and future until modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, respondent is clearly entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934.

The action of the Commission in this respect is in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

4. Respondent's rates throughout the period in controversy in said cause were of two kinds:

(a) Those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws;

(b) Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

The Commission in its findings and orders of January 16 and March 1, 1934, having fixed the value of respondent's property, its revenues, expenses and net income for each of the years in controversy and the net income which respondent was entitled to earn under what the Commission [fol. 611] found to be fair rates of return for each of the years, thereupon ordered respondent to refund to its subscribers and patrons the sum of $13,289,172, being the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction as between rates collected pursuant to bond and rates not so collected.

By the Commission's order of July 5, 1934, the respondent is directed to refund $11,423,137 to its subscribers paying the same in exchanges where rates paid by them were made effective pursuant to bonds, and $744,541 to its toll users in respect of toll rates which were collected pursuant to bonds; in the aggregate the sum of $12,167,678.

In arriving at the amount of said refunds for each of said years it was necessary for the Commission to and it did make three apportionments and allocations:

1st. An apportionment and allocation of the alleged excessive earnings of respondent for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between rates collected pursuant to bond and those not so collected;

2nd. An apportionment and allocation of the refunds ordered to be made in the total sum of $12,167,678 between the respondent's exchanges and its toll system; and

3rd. An apportionment and allocation of the sum of $11,423,137, which is the amount respondent is required to refund in its several exchanges, among said several exchanges, all as listed on Schedule "A" attached to said order of July 5th.

Neither said order of July 5, 1934, nor the record in this case shows the information used in making these apportionments or the method by which they were made.

If the Commission made said apportionments and allocations by a consideration of the fair value of respondent's [fol. 612] property, its revenues, expenses and net income, it did so upon information which respondent had no opportunity to examine, analyze, explain or rebut. If the Commission made said apportionments and allocations without a consideration of the fair value of respondent's property, revenues, expenses and net income in respondent's separate exchanges and toll system, it did so on an arbitrary basis not supported by any evidence in the record and its findings are, therefore, void.

The Commission had no authority under any circumstances to require respondent to make refunds with respect to rates collected under bond without determining the fair value of respondent's property, its revenues, expenses and net income for each of such exchanges separately and for its toll system, and the Commission's refusal to permit respondent to introduce such evidence and the Commission's determination of the amount of such refunds without having received such evidence deprived respondent of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The respondent on the 31st day of July, 1934, made a written request of the Commission that it exhibit to the respondent and afford it an opportunity to examine, analyze, explain and rebut the information considered and used by the Commission in its order of July 5, 1934, in making such apportionments, and that it indicate whether, in making the same, it had considered the fair value of the respondent's property, its revenues, expenses and net income, and if it had not done so to disclose the method used in arriving at said apportionments.

5. The respondent was denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the orders requiring refunds made in this cause because of the following facts:

[fol. 613] (a) Prior to the 14th day of October, 1924, respondent or its predecessor had filed with the Commission pursuant to the provisions of the said Robinson and Pence Laws, a number of separate schedules of increased rates for its service in separate exchanges and a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by respondent with and approved by the Commission;

(b) In each instance such schedule had been made the subject of a separate case on the dockets of the Commission and in each such case respondent was proceeding to show the fair value of its property and its revenues, expenses and net income, and that the rates so made effective pursuant to bond were just and reasonable, when the Commission, on its own motion on said 14th day of October, 1924, instituted its own company wide investigation of respondent's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit";

(c) Respondent repeatedly urged during the progress of the hearings before the Commission that it had the right to

submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues, expenses, net income and fair rate of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and repeatedly demanded the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under bonds were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the respondent "has always insisted upon the right to present and has offered to [fol. 614] present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence laws;

(d) The Commission refused to permit the introduction of evidence with respect to the fair value of respondent's property, its revenues, expenses, net income and fair rate of return in such separate exchanges and in its toll system and denied respondent a hearing in respect thereof.

Said refunds were ordered arbitrarily and without any evidence upon which they can be sustained.

6. The Commission erred in its order of July 5, 1934, determining the amount of refunds separately for each of the exchanges listed on Exhibit "A" attached thereto and for respondent's intrastate toll system, by refusing to take into consideration the fair value of the respondent's property, its revenues, expenses and net earnings in each of said separate exchanges and in said toll system, in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

7. The Commission was required by the applicable statutes and under the terms of respondent's bonds to make a determination of the reasonableness or unreasonableness of the rates charged by respondent in each specific case where such rates had become effective pursuant to bond.

Such determination could only be made by taking into consideration the fair value of respondent's property, its revenues, expenses and net income for each separate ex-

change and for its toll system. While the Commission has fixed the amount to be refunded by respondent for each exchange and for its toll system, it has done so without any determination based upon evidence that the rates collected pursuant to bond were unreasonable or excessive in any such exchange or in respondent's toll system.

Therefore, the said orders of the Commission made in this case do not comply with the requirements of the Ohio law and are void.

[fol. 615] 8. The said orders of the Commission requiring respondent to file a schedule of rates as of June 30, 1925 which shall produce to respondent net income not in excess of that found by the Commission in said orders to be fair and reasonable as of June 30, 1925 and the order of the Commission of July 9, 1934, ordering that respondent show cause why a further order shall not enter in this cause adopting, prescribing and substituting the so-called first or second suggested revision of existing schedules of respondent for the existing schedules of rates, deprive respondent of its property without due process of law and deny it the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States, in that:

(a) The rates of respondent now and heretofore in effect, including such rates as have been increased under the Robinson and Pence laws pursuant to bond, are and at all times have been the duly and lawfully established rates which respondent is entitled to charge for its service. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such service at any time prior to the effective date of a new order by the Commission.

(b) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

9. The said findings and orders of the Commission deprive respondent of its property without due process of law

and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

[fol. 616] (a) That the fair value of respondent's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) That the net income of respondent from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) That respondent's net income from said intrastate business equalled an annual earning upon the said value of respondent's intrastate property at the following rates for the following years:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

[fol. 617] (d) That the reasonable rates of return which respondent was entitled to earn upon said intrastate property were the following percentages for the following years:

1925 to 1929, inclusive	7	per	cent	per	annum
1930 to 1931, inclusive	6½	"	"	"	"
1932 and 1933	5½	"	"	"	"

(e) In its findings and orders of January 16 and March 1, 1934, the Commission found that respondent had collected during the period 1925 to 1932, inclusive, the sum of $13,289,172 in excess of a fair return upon the fair value of its intrastate property used and useful in the service of the public and that such excess had been collected in the following amounts in the following years:

1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

Upon such findings so made the Commission ordered respondent to refund to its subscribers and telephone users said sums of money above set out, aggregating the sum of $13,289,172, with interest thereon, and ordered respondent to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until the further order of the Commission.

In its finding and order of July 5, 1934, the Commission found that respondent had collected excess charges under bond in exchanges and its intrastate toll system for the following years in the following amounts:

[fol. 618]

	Exchange	Toll
1925	$1,137,195.00	$510,142.00
1926	1,637,314.00	234,399.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....

	Exchange	Toll
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
Total	$11,423,137.00	$744,541.00

Upon such findings so made the Commission ordered the respondent to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $744,541, and in the aggregate amount of $12,167,678, together with interest thereon at the rate of 6% per annum from the date of payment until the date of the refund.

Said findings and orders of the Commission are arbitrary, unreasonable, invalid and confiscatory of respondent's property in that the fair value of respondent's said intrastate property in each of said years was largely in excess of the amounts so found by the Commission therefor; respondent's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by respondent were substantially lower than those which the Commission found respondent had earned in each of said years, and the return to which respondent was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and respondent had no excessive or unreasonable net income in any of said years, all as more particularly shown in paragraphs 10, 11, 12 and 13 infra.

10. The Commission erred in finding that the fair value of respondent's intrastate property used and useful in the [fol. 619] service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of respondent's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

11. The Commission erred in finding that the net income of the respondent from its intrastate business in the State of Ohio available for a return upon its said intrastate property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,742
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence the Commission should have found that respondent's net income from such business available for a return upon such property, was not more than the following amounts in each of the following years:

[fol. 620] 1925	$5,956,673
1926	6,667,946
1927	7,202,348
1928	8,205,623
1929	8,153,593
1930	8,017,157
1931	8,065,229
1932	7,038,876
1933	6,160,952

12. The Commission erred in finding that respondent's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "

1928	8.57 per cent
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

The rates of return so found by the Commission are higher than the rates of return actually earned by respondent upon such property, in that, as shown by the evidence, the Commission found the fair value of respondent's intrastate property in each of such years to be too low as shown in paragraph 10 hereof, and found respondent's net income for each of such years to be substantially higher than it actually was, as shown in paragraph 11 hereof.

The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, respectively, as hereinafter in paragraph 13 set forth.

[fol. 621] 13. The Commission erred in finding that respondent was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence that the rates of return at which respondent was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission have deprived respondent of its property without due process of law and have denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

14. The Commission erred in arriving at the fair value of the respondent's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company begin-

ning with December 31, 1920, in that it applied such price trends to all plant items purchased from Western Electric Company and included in the respondent's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to respondent. The telephone apparatus included in respondent's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by the use of such Western Electric prices for telephone apparatus obtained an alleged trend therefor, and then erroneously applied such trend, not only to the [fol. 622] telephone apparatus in respondent's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of respondent's property, and its finding in this respect is arbitrary, and was unlawful and unreasonable.

15. The evidence showed that the prices charged by Western Electric Company to respondent for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of Western Electric Company in its Bell business and in its business with the respondent were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including respondent.

The appraisal introduced in evidence by respondent as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by respondent. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone

manufacturers. Such appraisal also included respondent's real estate at its market value and respondent's buildings at their fair value.

All subsequent additions to respondent's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by respondent therefor.

The Commission erred in determining the fair value of respondent's property by applying price trends of labor and material costs based upon the alleged experience of [fol. 623] manufacturers other than Western Electric Company and upon other labor and material in costs not current in or applicable to the telephone industry in Ohio.

16. The Commission, in fixing the fair value of respondent's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increased of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Company in November, 1930, under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to respondent and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices exces-

sive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of respondent's intrastate property for each of the years 1930, 1931, 1932 and 1933.

[fol. 624] 17. The Commission erred in arriving at the fair value of respondent's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

18. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in respondent's books and shown by the evidence.

The actual cost of respondent's intrastate property, including cash working capital and materials and supplies as allowed by the Commission in said orders, were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

19. The Commission erred in finding in its orders of January 16 and March 1, 1934 that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected from the subscribers and patrons of its intrastate service within the State of Ohio, the sum of $13,289,172, in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio and in finding and deciding that such excess earnings had been collected in the following amounts in the following years, towit:

[fol. 625]

Date	Amount
1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

The Commission erred in finding in its order of July 5, 1934 that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intra-state services, exchange and toll, within the State of Ohio, the sum of $12,167,678.00 in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio, and in finding that such excess earnings had been collected in the following amounts in the following years, to-wit:

	Amount	
Year	Exchange	Toll
1925	$1,137,195	$510,142
1926	1,637,314	234,399
1927	1,823,857	.....
1928	1,772,238	.....
1929	1,344,624	.....
1930	1,357,589	.....
1931	1,519,405	.....
1932	830,915	.....
Total	$11,423,137	$744,541

There was no evidence in the case which justified any finding by the Commission that any refund should be made with respect to any of the years in question, and no basis upon which the Commission's order for such refund can be sustained.

[fol. 626] 20. The Commission's findings and orders that respondent refund to the subscribers and patrons of its in-

trastate service within the State of Ohio the sums specifically set forth in the last preceding paragraph are illegal and void and are not sustained by any evidence in the record.

21. The Commission erred in overruling respondent's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and in failing in said orders of January 16, 1934, March 1st, 1934, July 5, 1934 and July 9, 1934, to increase said value in the respects set forth in respondent's protest.

22. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the value of respondent's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value;

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the respondent's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred in reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

In each of the foregoing respects, the said findings and orders of the Commission deprive respondent of its prop- [fol. 627] erty without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

23. The Commission erred in said findings and orders by failing to give any consideration to or including any allowance for the going concern value of respondent's intrastate property in any of the years 1925 to 1933, inclusive.

In its order of January 10, 1931, the Commission fixed the tentative value of respondent's property and found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. In said order it made an allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value and in its orders fixing the same, the Commission not only eliminated any allowance for going value, but reduced the fair value of respondent's intrastate property as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1st, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise in the valuation of respondent's property. The respondent was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived respondent of its property without due process of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

24. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years [fol. 628] 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by respondent during such respective years in telephone property in process of construction, viz:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

Respondent was entitled to have included in the fair value of its intrastate property the above amounts for each of the above years, because the sum so invested by it in property in process of construction, being devoted to the public service, respondent was constitutionally entitled to earn a return upon such property, and the Commission's failure to include such amounts deprived respondent of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

25. The Commission erred in arriving at the fair value of respondent's said intrastate property in disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

26. The Commission erred in arriving at the fair value of respondent's said intrastate property, by limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which [fol. 629] the allowance for omissions was computed: right of way, buildings and general equipment.

27. The Commission erred in arriving at the fair value of respondent's intrastate property, in allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of respondent, as shown by the evidence.

28. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of respondent found by the Commission for each of the years 1925 to 1933, inclusive.

29. The Commission erred in finding that the actual existing depreciation in respondent's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of respondent's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of repro-

duction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own findings of fair value a sum on account of the existing depreciation in respondent's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

30. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of respondent's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

[fol. 630] 31. The Commission erroneously disallowed and refused to include in respondent's reasonable and necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of respondent's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

In so doing the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

32. The Commission erroneously refused to permit a reduction from respondent's gross income of the following sums of money for each of the years 1925 to 1933, inclusive, representing the annual expense of amortization of the intrastate portion of respondent's landed capital:

1925	$57,506
1926	58,976
1927	58,536
1928	60,471
1929	47,347
1930	51,776
1931	50,339
1932	47,862

33. The Commission erred in allowing in respondent's said operating expenses for each of the years 1925 to 1933 [fol. 631] an annual expense of depreciation at the rate of only four per cent per annum of respondent's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of respondent's intrastate property:

1925	$4,972,486
1926	5,430,897
1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

34. Respondent's evidence of its annual depreciation and amortization expense was based upon the service life and salvage of the several classes of respondent's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933, inclusive, for respondent's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting in accordance with the Uniform System of Accounts, prescribed by the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General

Code. The Commission also erred in disallowing entirely the company's expense of amortization of landed capital. The action of the Commission in so disallowing respondent's expense of amortization and reducing its expense of depreciation to four per cent per annum deprives respond-
[fol. 632] ent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

35. The amounts determined in said findings and orders as representing the proper annual expense of depreciation are not only too low by reason of the fact that such percentages so applied in each year are too low, but also because such percentages have been applied to alleged property values which are in themselves too low.

36. The Commission erroneously refused to permit the deduction from respondent's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by respondent to the American Telephone and Telegraph Company on account of license contract services rendered by said company to respondent, viz:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

Said sums of money were paid by respondent to said American Telephone and Telegraph Company for services actually rendered by the latter to respondent which services were required by respondent in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow respondent to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives respondent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 633] 37. The Commission erred in failing to make adjustments in respondent's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 31, 32 and 36, supra.

38. The reproduction cost new of the property of respondent used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to wit:

Account No.	
207	Right of Way.
211	Land.
212	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.
255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital, Including Supplies.
	Construction Work in Progress.

39. The fair value of respondent's property used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the [fol. 634] Commission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to such property as a whole and, specifically, as to each and all classes of such property.

40. The Commission erred in undervaluing the intrastate property of respondent, in increasing its revenues, decreasing its expenses and increasing its net income for each of said years, respectively, contrary to the law and the evidence.

41. The Commission erred in said order of March 1, 1934, effective nunc pro tunc as of January 16, 1934, in ordering that respondent, within ninety days from the date of the service of a copy of said order, prepare and file with the Commission new schedules prescribing rates, charges, tolls, rentals, for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the state and for intrastate toll service collected under bond which shall produce to respondent net income not in excess of that therein found to be fair and reasonable as of June 30, 1925.

42. The Commission erred in said order of March 1, 1934, in ordering respondent at the time of filing the aforementioned schedules to report to the Commission the amounts collected by respondent under bond from each exchange and for intrastate toll service, in excess of the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which a schedule went into effect providing for an increased rate; and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each year from 1925 to 1932, both inclusive (a) the revenue produced by the rates [fol. 635] and charges collected by respondent; (b) the revenue that would have been produced by the rates and charges as set forth in the schedules therein ordered to be filed; (c) the net reduction in revenues; (d) the amount collected by respondent under bond in the various proceedings therein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedules therein ordered to be filed.

43. The Commission erred in said order of March 1, 1934, in ordering that respondent submit to the Commission the original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each, before the protested advances in rates.

44. The Commission erred in said order of March 1, 1934, in ordering respondent to begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by respondent from the effective dates thereof and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz: $13,289,172.

The Commission erred in said order of July 5, 1934, in ordering respondent to begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by respondent from the effective dates thereof, and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission has found to be unreasonable and excessive, viz: $12,167,678.

45. The Commission erred in said orders of March 1, 1934, and July 5, 1934 in ordering that if any such moneys so ordered to be repaid shall not be claimed by the corporation or persons entitled thereto in one year from the time the same shall become due and payable, as ordered by the [fol. 636] Commission, such money shall be paid to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund and in such amounts and in such manner as the Commission might order.

46. The Commission erred in said order of March 1, 1934, and July 9, 1934, in ordering that the schedule of rates, charges, tolls and rentals for all classes of respondent's intrastate service furnished in the State of Ohio thereafter found and determined to be just and reasonable be substituted for the schedules of respondent on file and under investigation in said cause and in the proceedings consolidated therewith.

47. In each and all of the foregoing respects complained of the Commission erred in denying respondent's protests and applications and petitions for a rehearing of said cause and in failing to grant the same.

48. The Commission erred in denying respondent's application and request filed herein on the 17th day of February, 1934, (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by respondent for its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by respondent for its services until changed or modified in accordance with law; (2) that the Commission permit respondent in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where respondent was and is collecting rates pursuant to bond as provided in said Robinson and Pence Laws; and (3) that the Commission afford respondent an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January [fol. 637] 16, 1934, which information was at no time exhibited to respondent or introduced in any open hearing or made a part of the record in said cause, and to which information respondent had never had access.

The action of the Commission in so denying said application and request has deprived respondent of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

49. In its order of July 5, 1934, the Commission has required respondent to refund the following percentages of the increases in rates collected by it under bond in its several exchanges and for its toll system for the following years:

	Exchange	Toll
1925	100.00000%	100.00000%
1926	100.00000%	42.76667%
1927	95.59084%	.....
1928	88.52068%	.....
1929	62.67606%	.....
1930	62.12778%	.....
1931	73.06314%	.....
1932	46.34134%	.....

The Commission erred in said order of July 5, 1934, in requiring said refunds to be made and its order deprives respondent of its property without due process of law and denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States for each of the following reasons and upon each of the following grounds:

(a) In arriving at said percentages the Commission refused to consider and determine for each exchange separately and for respondent's toll system the fair value of respondent's property, its revenues, expenses and net income, although respondent repeatedly demanded the right to offer such evidence;

[fol. 638] (b) The Commission has used an arbitrary method in ordering the refunds, viz: for each of the years in controversy a refund uniform for each exchange where rates were collected under bond, based upon a fixed percentage of the amount of the increases in rates collected under bond, which basis is wholly without support in the evidence;

(c) The Commission has not found that the rates collected under bond were unreasonable and excessive with respect to any exchange or with respect to respondent's toll system for any year. Without such a finding the Commission cannot under the applicable Ohio statute order any refund;

(d) The amount of the refunds have been based upon alleged excessive net income of respondent in its total business apportioned and allocated as between bonded and non-bonded cases, between respondent's exchanges and its toll system and among its several exchanges by some method purely arbitrary in character and by the application of which the Commission seeks to avoid the necessity of determining that which the law requires it to determine, viz: whether rates established under bond were unreasonable or excessive in each separate bond case and if so to what extent.

50. The Commission erred in its findings and order of July 5, 1934, in requiring respondent to repay unstated portions of its intrastate toll rates collected under bond "to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such

persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service." Respondent cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by respondent, to make any refunds except to persons who are subscribers or patrons of respondent.

51. The Commission ered in its order of July 5, 1934, in requiring the repayment by respondent to its intrastate toll users of the sum of $510,142 for the year 1925 and the sum of $234,399 for the year 1926, without having made a de- [fol. 639] termination of the fair value of respondent's property, its revenues, expenses and net income in such intrastate toll system. It is apparent from the findings and order of July 5, 1934, that the Commission arbitrarily allocated a portion of the claimed excessive income of respondent to its toll patrons for two years only, upon some basis not disclosed to respondent and not sustained by any evidence in the record. There was no evidence in this case upon which the Commission could have based any finding that respondent had made any excessive earnings in its toll system.

The respondent demanded the right to prove the fair value of its property used in rendering its intrastate toll service, and to show the revenues, expenses and net income from such property. The Commission refused to receive such evidence. In view of these facts it can make no valid order requiring any refunds to be paid by respondent on account of toll rates collected under bond.

52. The Commission erred in ordering respondent to refund in any exchange or in its intra-state toll system in any year the sums set forth in its order of July 5, 1934 and in Schedule A attached thereto, for the reason that there is no evidence in the record that the rates collected by respondent or its net income in any exchange or in its intra-state toll system in any year were unreasonable or excessive.

53. In each and all of the foregoing respects complained of the said proceedings, acts, findings and orders and each and all thereof of the Commission affect materially the substantial rights of respondent, are erroneous and prejudicial to it and are unlawful, unreasonable and are not sustained by sufficient evidence, are against the weight of the evidence

and contrary to the evidence, and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of respondent's property and deprive it of its property without due [fol. 640] process of law, and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, respondent prays that this protest, application and petition for rehearing be granted and respondent granted a rehearing in respect of each and all of the matters herein complained of; and that the findings and orders of the Commission entered in this cause on January 16, 1934, on March 1, 1934, July 5, 1934 and July 9, 1934, be vacated, set aside and held for naught.

The Ohio Bell Telephone Company, by Randolph Eide, Its President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

[fol. 641] EXHIBIT Q

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Protest and Application and Petition of The Ohio Bell Telephone Company for Rehearing of This Cause and of the Commission's Order Made Therein on the First Day of August, 1934 in Respect of Said Company's Request of July 31, 1934 Directed to the Commission's Order of July 9, 1934

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that on the

31st day of July, 1934 it filed in said cause its application and request with respect to the Commission's order of July 9, 1934, a copy of which said application and request is hereto attached, marked "Exhibit A" and made a part hereof as fully as if herein set forth at length.

[fol. 642] The respondent further shows the Commission that on the 1st day of August, 1934, in the proceedings in said cause then had before the Commission, the Commission, speaking through Commissioner Geiger, said in respect of said application and request as follows:

"The application of the Company to reopen the case to permit them to show what the effect of the proposed rate might be upon the valuation of their property as of 1934 will be overruled."

The respondent files this, its protest against such action and ruling of the Commission, and this, its application and petition for a rehearing of this cause, for the reasons and upon the grounds set forth in said application and request, "Exhibit A" attached hereto, and for the further reason that it was the duty of the Commission under the evidence in this case and its own findings to determine that the existing rates of respondent were no more than just and lawful rates to be charged by it for its present and future service until modified in accordance with law; or if the Commission proposed to make any reduction in the existing rates, respondent was, and is, entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934, and to show that if either of the revisions of its existing schedules referred to by the Commission in its said order of July 9, 1934 should be adopted, prescribed or substituted for its existing schedules of rates, the result would be to reduce respondent's net income from its intrastate business in Ohio for the year 1934 by more than $1,800,000.00 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

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* Said "Exhibit A" to this protest and application and petition for rehearing, although physically attached thereto when filed with the Commission, is not reprinted here because it appears as "Exhibit M" to the petition in error, reference to which is hereby made.

The respondent does not waive, but fully relies upon, each and every, all and singular, the specifications and [fol. 643] grounds contained in its protest and application for rehearing filed in said cause on July 31, 1934.

The Ohio Bell Telephone Company, by Randolph Eide, Its President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

August 29, 1934.

[fol. 644] EXHIBIT R

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Service Furnished by Said Company to Its Patrons Throughout the State of Ohio

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for further consideration upon the order made and entered herein as of date July fifth, 1934, the objections and protests thereto; the representations and showing made at said hearing, and the report, dated August 11, 1934, with accompanying exhibits, of Special Investigator E. W. Wood, which report and accompanying exhibits hereby are made a part of the record herein.

And the Commission, coming first to consider the application and petition of said The Ohio Bell Telephone Company asking, for the reasons and upon the grounds set forth therein, among other things, a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein upon July fifth, 1934, as aforesaid, finds that sufficient cause has not been [fol. 645] made to appear in said application and petition for such rehearing and does hereby deny the same.

To which action of the Commission in denying its said application and petition for such rehearing, said The Ohio Bell Telephone Company then excepted, here now excepts, and its exceptions here are noted of record.

And the Commission, coming now to consider the application and request of said The Ohio Bell Telephone Company that it disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut certain information, and to introduce certain evidence, with respect to the matters and things decided and determined by said finding and order dated July fifth, 1934, and the Commission having heretofore incorporated into the record herein and accorded said respondent ample opportunity to examine and consider all necessary and pertinent information requested in said application, finds that the same should be, and hereby is overruled.

To which action of the Commission in overruling its said application and request, said The Ohio Bell Telephone Company then excepted, here now excepts and its exceptions here are noted of record.

And the Commission, coming now to consider the verified return of said The Ohio Bell Telephone Company to the order to show cause contained in the Commission's findings and order of July fifth, 1934, and the prayer thereof, finds that said return and the prayer thereof should be and hereby are overruled.

To which action of the Commission in overruling said verified return and the prayer thereof, said The Ohio Bell Telephone Company then excepted, here now excepts and its exceptions here are noted of record.

And the Commission, coming now to consider the matters herein now at issue as set forth in the first paragraph [fol. 646] of this finding and order, finds that the finding as to excess intrastate toll charges collected under bond in Advanced Utility Rate Proceeding No. 124, set forth in the finding and order of July fifth, 1934, as the sum of $510,142.00 for the year 1925 and the sum of $234,399.00 for the year 1926, should be corrected to read the respective sum of $232,282.00 for the year 1925 and the sum of $176,845.00 for the year 1926.

The Commission, therefore, further finds:

That the excess charges collected under bond as provided by law in protesting exchanges, for local exchange service, is found to be as follows:

1925	$1,137,195.00
1926	1,637,314.00
1927	1,823,857.00
1928	1,772,238.00
1929	1,344,624.00
1930	1,357,589.00
1931	1,519,405.00
1932	830,915.00
Total	$11,423,137.00

That the excess charges collected under bond, as provided by law, for intrastate toll services for the following years is found to be as follows:

1925	$232,282.00
1926	176,845.00
Total	$409,127.00

That excess collections in the sum of $11,423,137.00 for exchange service and $409,127.00 for excess collections of intrastate toll services are refundable and subject to repayment by the Company to the subscribers and patrons paying the same;

[fol. 647] That said $11,423,137.00 excess collections are refundable to and subject to repayment to the subscribers and patrons of said utility of the various protesting exchanges to the extent of the amount, for each exchange and for the respective years aforesaid, as shown by the schedule hereto attached, identified as Schedule A, and made a part of this finding;

That the subscribers and patrons of said utility in said protesting exchanges paying said excess charges for local exchange service are entitled to have repayment made to them in such sum as is equal to the following per cent of the increase paid by them for the respective years aforesaid:

1925	100.00000%
1926	100.00000%
1927	95.59084%
1928	88.52068%
1929	62.67606%
1930	62.12778%
1931	73.06314%
1932	46.34134%

That the excess charges from intrastate toll service for the years 1925 and 1926, aforesaid, shall be repaid to the subscribers and patrons paying the same in ratio of the increased charges of the respondent, The Ohio Bell Telephone Company, to the total excess collections, and any such refunds apportioned to connecting companies should, by such connecting companies, be repaid to their respective patrons or, if not claimed by such patrons within one year from the date payable, paid to the public treasury as hereinafter provided;

That the repayment of excess intrastate toll service charges be made to the persons, subscribers and patrons paying the same, notwithstanding payments for said serv-[fol. 648] ices were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephonic services;

That interest at the rate of 6% per annum from the date of payment by the respective subscribers and patrons of said excess charges be paid to said subscribers and patrons on the amount so refundable and to be repaid to the date of repayment by the utility;

That such repayment shall be made within ninety days herefrom in cash and/or credit upon existing indebtedness, to the subscribers and patrons entitled thereto and if any such money to be repaid shall not have been claimed by the subscribers or patrons entitled thereto within one year from the time the same shall become due and payable, all such unclaimed money shall be paid by said The Ohio Bell Telephone Company to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund, and

That all findings and orders heretofore made pertaining to excessive charges and collections insofar as the same

may conflict with this finding shall be so modified as to conform to this finding.

It is, therefore,

Ordered, That said The Ohio Bell Telephone Company be, and hereby it is notified, directed and required, within ninety days herefrom, to refund in cash and/or credit upon existing indebtedness to each of its subscribers and patrons within each of the communities enumerated in Exhibit A, appended hereto, the excess or the proportion of the excess or increase which it collected under the bonds duly given in the Advanced Utility Rate Proceedings, enumerated in said Schedule A within each of the years set forth from the year 1925 to and including the year 1932, as prescribed [fol. 649] in said Schedule A, which hereby is made a part of this order as fully as if the same were here rewritten, and to all patrons who used intrastate toll service within the State of Ohio in the years 1925 and 1926, the total excess collections of $232,282.00 for the year 1925 and of $176,845.00 for the year 1926, in the ratio of the increased charges of The Ohio Bell Telephone Company to the total excess collections made by it under bond for all intrastate toll service rendered by The Ohio Bell Telephone Company individually and jointly with connecting companies, together with interest thereupon at the rate of six per centum per annum from the date of payment by the respective subscribers and patrons of said excess charges to the date of such repayment;

Provided, however, that if any of such money so ordered repaid including proportions of the excess intrastate toll collections apportioned to connecting companies, shall not have been claimed by the subscribers and patrons of The Ohio Bell Telephone Company and of its connecting companies, entitled thereto within one year from the time the same shall become due and payable, in accordance with this order, all such unclaimed money shall forthwith be paid by said The Ohio Bell Telephone Company to the Treasurer of the County or other political subdivision in which said new schedule is effective, to the benefit of its general fund. It is, further,

Ordered, That all protests and objections to the finding of July fifth, 1934, herein, inconsistent with this order be, and hereby the same are, overruled.

To which order of the Commission, the objections of said parties were then noted and here are noted of record.

And it appeared further that certain of the Advanced Utility Rate Proceedings consolidated in this proceeding involve proposed increased rates which were proffered for filing prior to the initial date for the making of refunds as prescribed herein, it is, further,

[fol. 650] Ordered, That said The Ohio Bell Telephone Company be, and hereby it is notified, directed and required, within sixty days herefrom, to report to this Commission the amount of increase in rates which it had collected from the date of the filing of its bond until the first day of January, 1925, in each of the exchanges involved in the said Advanced Utility Rate Proceedings, consolidated herein, which were instituted prior to January 1, 1925. It is, further,

Ordered, That within thirty days after the completion of such refunds, said The Ohio Bell Telephone Company make verified report of same to this Commission. It is further,

Ordered, That jurisdiction of this matter be, and hereby is, retained for the purpose of making such audit or further order herein as may be necessary and proper in the premises.

The Public Utilities Commission of Ohio, Frank W. Geiger, Charles F. Schaber, Commissioners. (Seal.)

Dated at Columbus, Ohio, this 6th day of September, 1934.

A true copy. C. H. Knisley, Secretary.

SCHEDULE A

The Ohio Bell Telephone Company

Formal Case No. 3307

Proportion of Amounts Collected Under Exchange Service Bonds, as Reported by Company, Which Represent Excessive Return on Exchange Service as Found by Commission

Exchange	Effective Date	A.U.R.P.	1925	1926	1927	1928	1929	1930	1931	1932	Total.
Akron	8-1-24	138	142,887.	148,320.	152,486.	154,832.	122,856.	124,652.	138,562.	76,958.	1,061,553.
Alton	1-1-25	160	341.	357.	372.	348.	271.	330.	425.	296.	2,740.
Bridgeport	9-1-25	197									
Bellaire	9-1-25	196	10,496.	30,850.	29,653.	26,767.	19,435.	19,693.	21,738.	11,552.	170,184.
Martins Ferry	9-1-25	199									
Canfield	11-1-25	205	455.	2,666.	2,548.	2,383.	1,679.	1,639	1,875.	1,074.	14,319.
Canton	2-1-27	252	—	—	75,171.	77,371.	59,221.	59,498.	64,594.	33,093.	368,948.
Cleveland	8-1-24	142	86,717.	92,976.	94,788.	91,036.	71,411.	73,539.	84,378.	50,287.	645,132.
Columbus	3-1-26	214	—	374,673.	445,663.	426,841.	314,927.	311,957.	354,116.	198,739.	2,426,916.
Coshocton	10-1-26	237	—	2,229.	8,488.	7,845.	5,652.	5,531.	6,345.	3,686.	39,776.
Dayton	8-1-24	141	268,119.	280,943.	293,214.	294,061.	227,274.	235,440.	268,639.	150,436.	2,018,126.
Dublin	1-1-25	164	943.	947.	950.	919.	715.	754.	897.	568.	6,693.
East Palestine	1-1-25	157	3,551.	3,542.	3,475.	3,325.	2,365.	2,338.	2,656.	1,539.	22,791.
Gahanna	1-1-25	161	1,280.	1,168.	1,102.	1,011.	792.	875.	1,025.	618.	7,871.
Galloway	1-1-25	165	787.	722.	697.	657.	459.	454.	482.	322.	4,580.
Girard	10-1-24	149	1,917.	2,020.	1,997.	1,926.	1,396.	1,387.	1,484.	779.	12,906.
Groveport	1-1-25	170	2,012.	1,798.	1,733.	1,626.	1,195.	1,240.	1,355.	835.	11,794.
Harrisburg	1-1-25	166	1,690.	1,627.	1,513.	1,358.	992.	969.	1,084.	637.	9,870.
Hilliards	1-1-25	167	1,072.	1,073.	1,052.	945.	815.	910.	1,070.	584.	7,521.
Kent	9-1-25	198	4,753.	14,724.	14,348.	13,912.	10,328.	10,557.	12,039.	7,006.	87,667.
Lancaster	12-1-20	40	13,626.	14,115.	13,843.	13,008.	9,220.	9,117.	10,561.	6,368.	89,858.
Lockbourne	1-1-25	168	721.	627.	552.	489.	258.	221.	217.	125.	3,210.
London	10-1-26	238	—	493.	1,888.	1,704.	1,165.	1,067.	1,206.	713.	8,236.
Marietta	8-1-24	136	19,753.	19,946.	18,678.	16,987.	12,133.	12,304.	13,311.	7,696.	120,808.
Massillon	8-1-24	132	39,540.	41,322.	41,769.	39,611.	29,696.	29,124.	31,297.	16,852.	269,211.
Mentor	10-1-26	240	—	162.	649.	593.	419.	435.	602.	375.	3,235.
Middletown	8-1-24	137	43,933.	45,694.	45,272.	43,361.	32,479.	32,996.	36,996.	21,147.	301,878.
New Albany	1-1-25	163	1,013.	981.	925.	834.	610.	628.	736.	400.	6,127.

Niles	10-1-24	147	6,119.	6,000.	5,523.	5,320.	3,996.	3,989.	4,143.	2,131.	37,221.
Osborn	10-1-25	204	123.	492.	470.	435.	308.	306.	359.	228.	2,721.
Pickerington	1-1-25	171	879.	853.	828.	813.	600.	462.	553.	340.	5,328.
Piqua	9-1-24	143	12,110.	12,111.	11,588.	10,898.	7,907.	7,774.	8,791.	4,992.	76,171.
Reynoldsburg	1-1-25	169	1,678.	1,644.	1,639.	1,583.	1,228.	1,298.	1,476.	890.	11,436.
Ripley	1-1-21	42	888.	915.	871.	825.	585.	559.	640.	393.	5,676.
Sedalia	10-1-26	241	—	32.	125.	114.	77.	75.	82.	43.	545.
South Charleston	1-1-25	159	934.	935.	909.	817.	589.	544.	601.	351.	5,680.
South Solon	1-1-25	172	220.	199.	186.	153.	88.	85.	99.	58.	1,088.
Springfield	4-1-26	218	—	39,723.	51,138.	47,835.	36,534.	36,713.	40,337.	21,564.	273,844
Steubenville & Mingo Junction	9-1-24	146	22,014.	22,963.	22,558.	21,553.	16,007.	15,984.	17,591.	9,280.	147,950.
Toledo	8-1-24	139	261,624.	270,064.	269,534.	258,054.	193,480.	192,064.	209,111.	106,839.	1,760,770.
Toronto	12-1-24	156	2,182.	2,297.	2,362.	2,355.	1,715.	1,743.	1,930.	896.	15,480.
Washington Court House	10-1-26	242	—	2,040.	7,758.	7,258.	5,034.	4,878.	5,432.	3,040.	35,440.
Worthington	1-1-25	162	5,307.	5,184.	5,209.	5,305.	4,018.	4,347.	5,204.	3,231.	37,805.
Youngstown	6-1-24	135	177,511.	187,887.	190,333.	185,173.	144,695.	149,113.	165,366.	83,954.	1,284,032.
Total			1,137,195.	1,637,314.	1,823,857.	1,772,238.	1,344,624.	1,357,589.	1,519,405.	830,915.	11,423,137.
Refundable Proportion of Increase Collected			100.00000%	100.00000%	95.59084%	88.52068%	62.67606%	62.12778%	73.06314%	46.34134%	

[fol. 652] EXHIBIT S

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by The Public Utilities Commission of Ohio, Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Application and Request of The Ohio Bell Telephone Company With Respect to the Commission's Order of September 6, 1934

The respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that by its findings and order entered in this cause on the 16th day of January, 1934, and by its order, dated March 1, 1934, purporting to correct said order of January 16, 1934, the Commission ordered respondent to refund to its subscribers and patrons a portion of the rates collected by respondent for its intrastate telephone service, during the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172 with interest thereon.

[fol. 653] The respondent further shows the Commission that the amount of said refunds aggregating $13,289,172 was arrived at in said orders of January 16 and March 1, 1934, as follows:

Respondent's rates throughout the period in controversy were of two kinds:

(a) Those filed with the Commission and, following the statutory protest and suspension, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws; and

(b) Those filed with the Commission and, in the absence of such protest and suspension, made effective without bond or other condition.

The Commission found the value of respondent's intrastate property, the net income which respondent had

earned in each of the years in controversy, and the net income which it was entitled to earn under what the Commission found to be fair rates of return for each of such years. It thereupon in said orders of January 16 and March 1, 1934, ordered respondent to refund the aggregate sum of $13,289,172, being the difference between respondent's net income, so found, and the net income which the Commission found it should have earned thereon at fair rates of return during each of such years.

By the Commission's order of July 5, 1934, respondent was directed to refund $11,423,137 to its subscribers in exchanges where rates paid by them were made effective pursuant to bonds; and $744,541 to its toll users in respect of toll rates which were collected pursuant to bonds, in the aggregate the sum of $12,167,678.

By the Commission's order of September 6, 1934, the respondent is directed to refund $11,423,137 to its subscribers in exchanges where rates paid by them were made effective pursuant to bonds, and $409,127 to its toll users in respect of toll rates which were collected pursuant to bonds, in the aggregate the sum of $11,832,264.

[fol. 654] The order of September 6, 1934, requires refunds to be made by respondent in an amount $1,456,908 less than the refunds required by the orders of January 16 and March 1, 1934.

In arriving at the amount of said refunds for each of said years, 1925 to 1932 inclusive, the Commission made two apportionments and an allocation:

1st. An apportionment of the $13,289,172 of alleged excessive earnings of respondent for the years 1925 to 1932, inclusive, between protesting exchanges, that is to say, exchanges where any rate had been collected under bond in any of the aforementioned years, and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected, resulting in the apportionment to protesting exchanges of the sum of $11,832,264.

2nd. An allocation to respondent's toll system of a part ($409,127) of the amount ($11,832,264) so apportioned to its protesting exchanges; and

3rd. An apportionment among the protesting exchanges of the resulting difference, i. e., $11,423,137 (being the total amount respondent is required to refund to such several

exchanges), all as listed on Schedule "A" attached to said order of September 6, 1934.

By way of attempted justification of such apportionments and allocation, the Commission in said order of September 6, 1934, and not before, caused to be made a part of the record in this cause "the report dated August 11, 1934, with accompanying exhibits of Special Investigator E. W. Wood," which report and exhibits, avowedly submitted pursuant to "instructions" of the Commission, not shown to respondent, and purporting to contain material evidence in said cause, were never disclosed to respondent, nor was an opportunity afforded it to examine, analyze or rebut the same or to cross-examine with respect thereto; nor did respondent have any knowledge of the same until the entry of said order of September 6, 1934.

[fol. 655] Respondent, The Ohio Bell Telephone Company, now requests the Commission:

1. To disclose to respondent and afford it an opportunity to examine and analyze the alleged "instructions" issued by the Commission to the said E. W. Wood and referred to in his said report, responsive to which instructions, said report and its accompanying exhibits were prepared and made, and to afford the respondent an opportunity (a) to examine, analyze and challenge the propriety and materiality of said instructions, (b) to examine and cross-examine the said E. W. Wood in respect thereof and in respect of the statements and data contained in said report and exhibits, and (c) to explain and rebut said report and exhibits and any testimony in respect thereof. Respondent requests that the Commission hold an open hearing at which the information herein requested shall be disclosed to respondent and at which respondent shall have the opportunity to examine, cross-examine, analyze, explain and rebut as herein requested.

2. To permit respondent, in accordance with the requests heretofore made by it and hereby renewed, to introduce separate evidence of the fair value of its property and as to its revenues, expenses and net income for each of the separate cases wherein respondent is collecting rates pursuant to bond.

3. To disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut the information and

methods of application thereof used by this Commission in arriving at its findings and order of January 16, 1934, consisting of alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, and not offered or introduced in evidence in any open hearing or made a part of the record in this case, and to which information and the methods of its application respondent has never had access or been informed in respect thereof, as follows:

[fol. 656] (a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Ohio Bell Telephone Company, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

September 25, 1934.

[fol. 657] EXHIBIT T

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by the Public Utilities Commission of Ohio, Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio.

Protest and Application and Petition of The Ohio Bell Telephone Company for a Rehearing of This Cause

The Respondent in the above entitled cause, The Ohio Bell Telephone Company, shows the Commission that on the

16th day of January, 1934, the Commission made and entered findings and an order in this cause in respect of which the respondent on the 6th day of February, 1934, filed its protest and application and petition for a rehearing, and on the 17th day of February, 1934, its further application and request, both of which were overruled and denied by the Commission on March 1, 1934.

[fol. 658] The Commission, in its said order entered on the first day of March, 1934, attempted to correct nunc pro tunc its said findings and order of January 16, 1934, in respect of which order of March 1, 1934, the respondent, on the 9th day of March, 1934, filed its protest and application and petition for a rehearing, which was denied by the Commission on the same day.

On the 5th and 9th days of July, 1934, the Commission made and entered two further findings and orders in said cause supplementing and modifying its findings and orders of January 16 and March 1, 1934.

On July 31, 1934, respondent filed the following papers and documents:

Application and request of respondent with respect to the Commission's order of July 5, 1934;

Application and request of respondent with respect to the Commission's order of July 9, 1934;

The verified return of respondent to the rule to show cause contained in said order of July 5, 1934;

The verified return of respondent to the rule to show cause contained in said order of July 9, 1934;

Protest of respondent against said orders of July 5 and July 9, 1934, and each of them, and against said findings and orders of the Commission of January 16 and March 1, 1934, and each of them, as supplemented and modified by said findings and orders of July 5 and July 9, 1934, and application and petition of respondent for rehearing.

On August 1 and August 3, 1934, the Commission conducted hearings for further consideration of the order of July 5, 1934 and the objections and protests thereto, and upon said verified returns, said protests and applications and petitions for rehearing and upon said applications and requests with respect to the Commission's orders of July 5 and July 9, 1934, respectively, and evidence was introduced. At said hearings, there testified E. W. Wood, a

special investigator in the employ of the Commission, who prepared Schedule A to the order of the Commission of July 5, 1934 and the percentages and tabulations in said [fol. 659] order, and who made the apportionments and allocation upon which said percentages and tabulations and said Schedule A were based. Said evidence disclosed to respondent, in substance, the information and methods upon which the Commission unlawfully and arbitrarily based and by which it unlawfully and arbitrarily made said apportionments, allocation, percentages and tabulations, and further disclosed that the Commission did not make the same by a consideration of the fair value of respondent's property, revenues, expenses and net income. The Commission did not permit and at no time has permitted respondent, in accordance with the requests theretofore made by it, and renewed by paragraph numbered 3 of said application and request with respect to the Commission's order of July 5, 1934, to introduce evidence of the fair value of its property and as to its revenues, expenses and net income for each of the said cases wherein the respondent is collecting rates pursuant to bond; nor did the Commission disclose to the respondent, nor afford it an opportunity to examine, analyze, explain and rebut the information used by the Commission in arriving at its finding and order of January 16, 1934, consisting of alleged material and labor cost prices and trends, obtained from various sources without respondent's knowledge, not offered or introduced in evidence in any open hearing or made a part of the record in this case and to which respondent has never had access, in accordance with the requests theretofore made by it and renewed by paragraph 4 of said application and request.

On August 1, 1934, in the proceedings then had before the Commission, the Commission, speaking through Commissioner Geiger, said, referring to respondent's application and request with respect to the Commission's order of July 9, 1934:

"The application of the company to reopen the case to permit them to show what the effect of the proposed rate might be upon the valuation of their property as of 1934, will be overruled."

[fol. 660] On August 29, 1934, respondent filed its protest against said action and ruling of the Commission with re-

spect to respondent's application and request last above referred to, and its further application and petition for a rehearing of this cause.

On September 6, 1934 the Commission made and entered its further finding and order in said cause, in which it denied "the application and petition of said The Ohio Bell Telephone Company asking, for the reasons and upon the grounds set forth therein, among other things, a rehearing with respect to the matters and things decided and determined by said finding and order made and entered herein upon July 5, 1934"; found, contrary to the fact, that it had accorded respondent ample opportunity to examine and consider all necessary and pertinent information requested in its application and request with respect to the Commission's order of July 5, 1934, and overruled said application and request, whereas the Commission, in fact, had not complied with said application and request, save in the limited respect that, through the examination of said E. W. Wood, respondent secured certain information as to the unlawful and arbitrary methods employed by the Commission in making the apportionments, allocation, percentages and tabulations contained in said order of July 5, 1934 and in Schedule A thereof; overruled respondent's verified return to the rule to show cause contained in the order of July 5, 1934 and the prayer of said verified return; made other findings and orders, all as set forth in said order of September 6, 1934, and stated that all findings and orders made prior to said order of September 6, 1934 pertaining to excessive charges and collections, in so far as the same may conflict with the finding of September 6, 1934, shall be so modified as to conform to it.

Respondent shows that said findings and order of September 6, 1934 and said findings and order as originally entered on January 16, 1934, as attempted to be corrected and modified by the findings and order of March 1, 1934 and as supplemented and modified by the findings and orders of July 5 and July 9, 1934, and as supplemented and [fol. 661] modified by the findings and order of September 6, 1934, are, and each of said orders is, unreasonable and unlawful and that the Commission therein and thereby committed and made substantial and prejudicial errors against the respondent in each of the following respects, for each

of the following reasons and upon each of the following grounds, to-wit:

1. The Commission erred in taking into consideration and basing its said findings and orders upon alleged material and labor cost prices and trends, obtained from various sources without respondent's knowledge, and not offered or introduced in evidence in any open hearing, or made a part of the record in this case, and to which respondent never had access and as to which it had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of respondent's property as of June 30, 1925, thereupon determined from the information above referred to and from price trends of Western Electric Company, erroneously compiled and applied as shown in Paragraph No. 18, infra, composite price trend percentages, which it erroneously applied to respondent's entire intrastate property, exclusive of right of way and working capital.

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public author-
[fol. 662] ity, governmental or state. They were not introduced in evidence, and respondent had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of respondent's property. By reason of these facts the Commission denied respondent a fair hearing and, in determining this case, admittedly considered and gave controlling weight to evidence not introduced in any hearing.

On the 25th day of September, 1934 respondent filed its written application and request asking the Commission

"To disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut the information and methods of application thereof used by this Commission in arriving at its findings and order of January 16, 1934, consisting of alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, and not offered or introduced in evidence in any open hearing or made a part of the record in this case, and to which information and the methods of its application respondent has never had access or been informed in respect thereof, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources."

The Commission has never complied with said application and request in any respect. On the 17th day of February, 1934 and the 31st day of July, 1934, respondent filed with [fol. 663] the Commission its similar written applications and requests, which, after argument and full hearings were erroneously overruled by the Commission in its orders of March 1, and September 6, 1934, respectively.

The fair value of respondent's property has thus been fixed and determined upon information and claimed proof which respondent had no opportunity to examine, analyze, explain or rebut, and respondent has accordingly been denied a fair trial and hearing by the Commission.

In its order of September 6, 1934 the Commission erroneously and incorrectly stated that it had accorded respondent ample opportunity to examine and consider all necessary and pertinent information requested in respondent's application and request with respect to the Commission's order of July 5, 1934.

The findings and orders of the Commission based upon such claimed proof deprive respondent of its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring respondent to file, effective retroactively, as of June 30, 1925, and thereafter until changed by the order of the Commission, such schedules of reduced rates for respondent's intrastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date.

The Commission in its findings and orders of January 16 and March 1, 1934, erroneously required respondent to file certain rate and revenue data and estimates. This order respondent complied with on April 17, 1934, under protest.

At the time respondent submitted to the Commission said "Rate and Revenue Data and Estimates" it advised the Commission in writing as follows:

[fol. 664] "The Ohio Bell Telephone Company, respondent in the above entitled cause, herewith submits to your Commission 'Rate and Revenue Data and Estimates' required by your orders of January 16 and March 1, 1934. These data and estimates are furnished subject to the following reservations and conditions:

"1. Such data and estimates are not furnished voluntarily but under protest and solely for the purpose of avoiding the imposition of drastic and heavy penalties for noncompliance with such orders.

"2. Included in the data and estimates are statements by exchanges of monthly rates which, if applied to the respective services actually rendered by the company during the year 1925, will produce approximately the total net income which the Commission found to be fair and reasonable for the year 1925. These data and estimates have been compiled on two bases—one applicable to both exchange and intrastate toll rates, and the other to exchange rates only. They are merely calculations made in order to accomplish the result required by the Commission, and are not

proposed by the company as, and are not schedules of rates and are not filed or offered for filing.

"3. The rates referred to above, if applied to the services actually rendered by the company during each of the succeeding years 1926, 1927, 1928, 1929, 1930, 1931, 1932 and 1933, will not produce the net income which the Commission found to be reasonable for the company for each of such years, because, among other things, of variations in the kind and volume of the company's business and its revenues and expenses in each such year, and because of the differences in the net income found by the Commission to be reasonable for each of such years.

"In calculating the revenue effect of these hypothetical rates in 1925, the statement for that year covers the full calendar year although where rates were increased during 1925 the revenue effect of the hypothetical rates as compared with the increased schedule has been calculated only for that portion of the year during which the increased rates were actually in effect. For the balance of the year [fol. 665] the revenue effect, if any, has been based on the rates actually existing prior to the increase, and in cases where the hypothetical rate is higher than the actual rate in effect prior to the increase no revenue effect has been considered. Similarly, rate increases which became effective subsequent to 1925 were considered as they occurred and revenue effects calculated for subsequent years accordingly. These post-1925 increases constitute one of the reasons why the revenue effect of the hypothetical rates is greater in subsequent years, as is evident from the tabulation of revenue effects by years for the particular exchanges where the increased rates became effective subsequent to January 1, 1925.

"The approximate annual amount collected under bond as reflected in the attached statements, includes the difference, if any, between the present schedule and the interim schedule, for those exchanges where dual service was furnished and where an interim schedule of monthly rates for Private Branch Exchange service to any station within the dual local service area was filed and approved.

"4. By furnishing such data and estimates The Ohio Bell Telephone Company does not admit that the Commission's orders of January 16 and March 1, 1934, are valid or enforcible. On the contrary, the company denies that the

Commission had any right in this cause to order the company to make refunds for any of the years 1925 to 1932, inclusive, or to order that schedules of reduced rates be filed, retroactively effective, and insists, for the reasons heretofore stated in the company's protests and applications and petitions for a rehearing of this cause, that said orders are invalid, unlawful and unreasonable."

Said orders, if enforced, will deprive respondent of its property without due process of law and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) The action of the Commission is an attempt to accomplish indirectly that which it cannot directly do, viz.: to deprive respondent of the opportunity to earn a fair re-[fol. 666] turn upon the fair value of its property by reducing respondent's present rates, although they are now producing, as the Commission finds in said orders, no more than a fair return on the present value of said property as found by the Commission.

(b) In said findings and orders of January 16 and March 1, 1934 the Commission found that for the year 1933 respondent was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that respondent's net income from said property for that year at its present rates did not exceed such a return. Any reduction in respondent's present rates will necessarily reduce its net income below the amount found by the Commission to be fair.

(c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive plaintiff in error of its property without due process of law, and deny it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) Under the applicable Ohio statutes the Commission has no authority to require respondent to file schedules of rates, effective retroactively.

(e) The action of the Commission in this respect is in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

(f) Such order attempts unlawfully to reduce respondent's rates for its present and future service, by ordering respondent to make effective for such service rates not in issue in any of the separate bond cases and in respect of which no hearing or proof has been had.

In addition, the hypothetical rates contained in the "Rate and Revenue Data and Estimates" which respondent was compelled to and did furnish to the Commission on April 17, 1934, cannot be made the basis of any order fixing rates for the future for respondent for each of the following reasons:

[fol. 667] (a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to respondent's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of September 6, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond, and in an amount approximately $450,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

(b) The hypothetical rates contained in said "Rate and Revenue Data and Estimates," if they had been in effect during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper for said years respectively, either in its said orders of January 16 and March 1, 1934, its order of July 5, 1934, or its order of September 6, 1934.

(c) Many of the decreases shown in the hypothetical rates in said "Rate and Revenue Data and Estimates" are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its orders of July 5, 1934 and September 6, 1934, requires refunds to be made only with respect to rates made effective pursuant to bond, said hypothetical rates can have no application to the orders of the Commission as now modified.

(d) The Commission has no right to fix rates for respondent's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of respondent for the year 1925. In determining rates for the present and future the Commission is required to consider the fair

value of respondent's property, its revenues, expenses and net income for the most recent period available. Although the Commission, in determining the refunds to be ordered, found, even on the low value of respondent's intrastate property as fixed by the Commission for the year 1933, and [fol. 668] upon the Commission's own findings in respect of revenues, expenses and net income for that year, that respondent was earning only a barely compensatory return for that year and therefore, upon such finding, made no order of refund against respondent for the year 1933, nevertheless the Commission has refused to consider and give effect to the same evidence, in its orders in respect of respondent's present and future rates.

3. The Commission erred in its findings and orders, in failing to continue the existing rates of respondent in effect for the present and the future. In the application and request filed by respondent with said Commission on the 31st day of July, 1934, respondent requested the Commission

"To modify its findings and orders herein and all of them by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio, are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced."

This request the Commission erroneously refused on August 1, 1934.

On February 17, 1934 respondent filed with the Commission its similar written application and request, which the Commission erroneously denied on March 1, 1934.

The Commission, notwithstanding its specific finding that respondent was earning no more than a barely compensatory return for the year 1933, is requiring a present reduction of rates which will deprive respondent of its property without due process of law and will deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Commission erred in disregarding the testimony in the record and its own findings, which show that for the year 1933 respondent was earning no more than a barely compensatory return.

[fol. 669] In the verified return of respondent to the rule to show cause contained in the Commission's said order of

July 9, 1934, respondent showed the Commission that if either of the revisions of its existing schedules proposed by the Commission should be adopted, prescribed or substituted for its existing schedules of rates, the result would be to reduce respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

On July 31, 1934, the respondent filed the following written request with the Commission:

"Inasmuch as no evidence was received by the Commission as to the fair value of the respondent's property, its revenues, expenses and net income for any period subsequent to 1933, if the Commission proposes to establish or put into effect any new, revised or lower schedules of rates, in respect of respondent's intrastate service, in its several exchanges and in its toll system, the respondent requests the Commission:

(1) to afford the respondent a hearing at which the respondent shall have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence shall relate to the year 1934.

(2) to permit the respondent to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's order of July 9, 1934.

The respondent now shows the Commission that, if permitted, it would prove that if either of said proposed revisions should be made effective the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000, and to permit it to earn less than 3½ per cent for the year 1934 on [fol. 670] the present fair value of its property employed in its intrastate service in Ohio."

This request the Commission erroneously refused on August 1, 1934.

It was the duty of the Commission under the evidence in this case and its own findings to determine that the existing rates of respondent were no more than just and lawful

rates to be charged, for the present and future until modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, respondent was entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934, and thereby to prove that any such reduction would be unlawful and unreasonable.

4. Respondent's rates throughout the period in controversy in said cause were of two kinds:

(a) Those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws;

(b) Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

The Commission in its findings and orders of January 16 and March 1, 1934, having fixed the value of respondent's property, its revenues, expenses and net income for each of the years in controversy and the net income which respondent was entitled to earn under what the Commission found to be fair rates of return for each of the years, thereupon ordered respondent to refund to its subscribers and patrons the sum of $13,289,172, being the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction as between rates collected pursuant to bond and rates not so collected.

[fol. 671] By the Commission's order of July 5, 1934, respondent was directed to refund $11,423,137 to its subscribers paying the same in exchange where rates paid by them were made effective pursuant to bonds, and $744,541 to its toll users in respect of toll rates which were collected pursuant to bonds; in the aggregate the sum of $12,167,678, a reduction of $1,121,494 attributable to alleged excess earnings of respondent in exchanges where rates were not collected pursuant to bond.

By the Commission's order of September 6, 1934, the respondent is directed to refund $11,423,137 to its subscribers in exchanges where rates paid by them were made effective

pursuant to bonds and $409,127 to its toll users paying the same, in respect of toll rates which were collected pursuant to bonds; in the aggregate the sum of $11,832,264, a further reduction of $335,414, or a total reduction of $1,456,908 from the refunds of $13,289,172 ordered in said orders of January 16 and March 1, 1934.

In arriving at the amount of said refunds for each of said years the Commission (in its orders of July 5, 1934 and Sept. 6, 1934), erroneously used a wholly unlawful, arbitrary and inapplicable method or device involving two apportionments and an allocation:

1st. An apportionment of the alleged excessive earnings of respondent for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between protesting exchanges, that is to say, exchanges wherein any rate had been collected under bond in any of the aforementioned years, and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected;

2nd. An allocation to respondent's toll system of a part ($744,541 in its order of July 5, 1934 and $409,127 in its order of Sept. 6, 1934) of the amount $12,167,678 in its order of July 5, 1934 and $11,832,264 in its order of Sept. 6, 1934) so apportioned to its protesting exchanges; and

3rd. An apportionment of the sum of $11,423,137 (the total amount respondent is required, by both of said last [fol. 672] mentioned orders, to refund in its several exchanges) among said several exchanges, all as listed on Schedule "A" attached to said order of July 5 and said order of Sept. 6, 1934.

The Commission erred in making all said apportionments and the allocation, upon which the refunds required by its orders of July 5 and Sept. 6, 1934 are based, in the following respects and for the following reasons:

(a) Instead of considering the fair value of respondent's property and net earnings separately by exchanges and separately for its toll system, the Commission, in making said apportionments and allocation, unlawfully and arbitrarily used and applied wholly irrelevant accounting methods and made wholly irrelevant calculations, having no relation to any property values and net earnings. It was impossible lawfully to make said apportionments and allocation by any accounting methods and calculations or to order any refunds based thereupon.

(b) The Commission method employed in making said apportionments and allocation was wholly arbitrary and not based upon any evidence in the case.

(c) The Commission failed and refused, as hereinafter set forth, to permit respondent to introduce evidence as to the fair value of its property, its revenues, expenses and net income separately by exchanges and separately for its toll system. Instead, the Commission based said apportionments and allocation on respondent's total exchange service revenues. No lawful apportionment or allocation of alleged excessive net earnings could be made on such basis, because the total exchange service revenues in a given exchange are in no sense evidence of net earnings in such exchange.

(d) Although total revenues could not lawfully be the basis for such apportionments and allocation, the Commission further erred in the application of its own unlawful method, in that, for the purpose of such apportionments and allocation, it considered exchange service revenues and ignored toll revenues, whereas in each of the years in controversy substantial revenues were received by respondent from its intrastate toll system.

[fol. 673] The Commission had no authority under any circumstances to require respondent to make refunds with respect to rates collected under bond without determining the fair value of respondent's property, its revenues, expenses and net income for each of its affected exchanges separately and for its toll system, and the Commission's refusal to permit respondent to introduce such evidence and the Commission's determination of the amount of such refunds by the use of such method, apportionments and allocation, without having received such evidence, deprived respondent of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The respondent on the 31st day of July, 1934, made a written request of the Commission that it exhibit to the respondent and afford it an opportunity to examine, analyze, explain and rebut the information considered and used by the Commission in its order of July 5, 1934, in making such apportionments, and that it indicate whether, in making the same, it had considered the fair value of the respondent's property, its revenues, expenses and net in-

come, and, if it had not done so, to disclose the method used in arriving at said apportionments. By the testimony of E. W. Wood, the Commission's special investigator, the information and methods considered and used by the Commission in unlawfully and arbitrarily making the apportionments, allocation, percentages and tabulations contained in said order of July 5, 1934 and Schedule A thereof were, in substance, disclosed to respondent and it was further disclosed and admitted that the Commission did not in making the same, or any thereof, in any respect, consider the fair value of respondent's property, its revenues, expenses and net income.

5. Among the errors set forth in Paragraph No. 4, the Commission further erred in its first unlawful apportionment, namely, that as between protesting and non-protesting exchanges, in the following respects and for the following reasons:

[fol. 674] (a) It included in its order of July 5, 1934, as revenues from bonded rates in protesting exchanges for 1925 and 1926 revenues from seven exchanges in which no rates were collected pursuant to bond in one or both of said years, which said exchanges, and the corresponding amounts of revenues which the Commission treated as bonded revenues in the years indicated, are as follows:

1925

Exchange	Revenues
Canton	$711,940
Columbus	2,632,978
Coshocton	66,705
London	43,099
Sedalia	3,630
Springfield	453,237
Washington C. H.	84,880
Total	$3,996,469

1926

Canton	$750,709

This single error increased the refunds ordered by the Commission for the years 1925 and 1926 by the principal sum of $335,414.

(b) It included, in its orders of July 5 and Sept. 6, 1934, as bonded revenues in each year, even though not collected pursuant to bond, revenues from all rates in every exchange in which any rate had been collected pursuant to bond, thereby erroneously increasing, by a substantial amount, the portion of said $13,289,172 of alleged excessive net earnings referable to increases collected under bond, and consequently the portion of such alleged excessive net earnings subject to refund.

In its order of September 6, 1934 the Commission altered its calculations only in respect of the single error set forth in sub-paragraph (a) of this paragraph 5, by ordering refunded to respondent's toll users a sum less than that ordered refunded in the order of July 5, 1934, by said sum [fol. 675] of $335,414. But it continued the use of its erroneous and inapplicable methods described in paragraph 4 hereof and, additionally, did not correct or attempt to correct the error set forth in sub-paragraph (b) of this paragraph 5.

6. Among the errors set forth in Paragraph No. 4, the Commission further erred in its unlawful allocation of alleged excess earnings to the toll system, in that:

The Commission refused to hear evidence offered by respondent as to the fair value of its intrastate toll system and the revenues, expenses and net income thereof. It did not even consider respondent's total intrastate toll revenues. Instead, the Commission, without evidence, arbitrarily allocated to respondent's intrastate toll system, and ordered refunded to respondent's toll users, such part of the total excess earnings apportioned by the Commission to the said protesting exchanges as could not be absorbed by the amounts collected under bond therein. Such refunds so ordered to be made to toll users in the order of July 5, 1934 amounted to the sums of $510,142 and $234,399 for the years 1925 and 1926, respectively, and nothing for any succeeding years, and in the order of September 6, 1934, amounted to the sums of $232,282 and $176,845 for said years respectively and nothing for any succeeding years, whereas the gross revenues in the toll system were greater in 1926 than in 1925 and greater in 1927 and in each succeeding year, to and including 1931, than in 1926.

7. Among the errors set forth in Paragraph No. 4, the Commission erred in making its unlawful apportionment among the protesting exchanges in that:

By basing its first apportionment, namely, that as between protesting and non-protesting exchanges, on total exchange service revenues, as hereinbefore in sub-paragraph (c) of Paragraph No. 4 set forth, the Commission assumed that there was included in each dollar of such revenues the same amount of excessive net earnings. This use of exchange service revenues and the assumption that in each dollar of such revenues there was included the same amount of excessive net earnings, the Commission aban- [fol. 676] doned when apportioning the alleged excessive net earnings among the several protesting exchanges; in that in such apportionment the Commission calculated the percentage relation in each year between the amount of alleged excessive net earnings apportioned to protesting exchanges and the total revenues in fact collected under bond. This percentage, varying from year to year, the Commission applied to the total revenues collected under bond in each exchange. Had the Commission continued the use of the method applied in making the first apportionment, namely the apportionment between protesting and non-protesting exchanges, the refunds ordered would have been less than ordered by the principal sum of $4,640,364.

8. The respondent was deprived of its property without due process of law and denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the orders requiring refunds made in this cause, because of the following facts:

(a) Prior to the 14th day of October, 1924, respondent or its predecessor had filed with the Commission pursuant to the provisions of the said Robinson and Pence Laws, a number of separate schedules of increased rates for its service in separate exchanges and a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by respondent with and approved by the Commission;

(b) In each instance such schedule had been made the subject of a separate case on the dockets of the Commission

and in each such case respondent was proceeding to show the fair value of its property and its revenues, expenses and net income, and that the rates so made effective pursuant to bond were just and reasonable, when the Commission, on its own motion on said 14th day of October, 1924, instituted its own company-wide investigation of respondent's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested in those cases [fol. 677] wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit";

(c) Respondent repeatedly urged during the progress of the hearings before the Commission and thereafter, that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues, expenses, net income and fair rate of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence Laws, and repeatedly demanded the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under bonds were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the respondent "has always insisted upon the right to present and has offered to present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence Laws;

(d) The Commission refused to permit the introduction of evidence with respect to the fair value of respondent's property, its revenues, expenses, net income and fair rate of return in such separate exchanges and in its toll system and denied respondent a hearing in respect thereof.

Said refunds were ordered arbitrarily and without any evidence upon which they can be sustained.

9. The Commission erred in its orders of July 5, 1934 and Sept. 6, 1934, determining the amount of refunds sep-

arately for each of the exchanges listed on Exhibit "A" attached to each of said orders and for respondent's intrastate toll system, by refusing to take into consideration the fair value of the respondent's property, its revenues, expenses and net earnings in each of said separate exchanges and in said toll system, in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

[fol. 678] 10. The Commission was required by the applicable statutes and under the terms of respondent's bonds to make a determination of the reasonableness or unreasonableness of the rates charged by respondent in each specific case where such rates had become effective pursuant to bond.

Such determination could only be made by taking into consideration the fair value of respondent's property, its revenues, expenses and net income for each separate exchange and for its toll system. While the Commission has fixed the amount to be refunded by respondent for each exchange and for its toll system, it has done so without any determination based upon evidence that the rates collected pursuant to bond were unreasonable or excessive in any such exchange or in respondent's toll system.

Therefore, the said orders of the Commission made in this case do not comply with the requirements of Ohio law and are void, and respondent has thereby been deprived of its property without due process of law and has been denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

11. The alteration of the Commission's calculations in respect of the error set forth in sub-paragraph (a) of paragraph 5 was made pursuant to a certain report dated August 11, 1934 with accompanying exhibits, which report and exhibits were prepared upon the Commission's instructions, undisclosed to respondent, by the Commission's special investigator, E. W. Wood. Said report and exhibits, in addition to the arithmetical calculations necessary to show said reduction of $335,414, contain much other matter and data designed and intended to support and amplify the methods employed by the Commission in making the apportionments and allocation above referred to and in ordering refunds based thereon, and designed and intended to supplement

the Commission's disclosures, made through said Wood at the hearings of August 1 and August 3, 1934.

[fol. 679] The Commission erred in stating in its order of September 6, 1934 that said order was made after full hearing, in that, in fact, no hearing was had upon the report of said E. W. Wood of August 11, 1934, and no hearing was had after the submission of the same, and respondent has never been afforded an opportunity to examine or cross-examine in respect of said report, or to explain, analyze or rebut the same.

The Commission further erred, in ordering the same with accompanying exhibits, to be made a part of the record herein without notice to respondent and without affording respondent an opportunity to examine, cross-examine, explain, analyze and rebut, as set forth above.

On September 25, 1934, respondent requested the Commission in writing

"1. To disclose to respondent and afford it an opportunity to examine and analyze the alleged 'instructions' issued by the Commission to the said E. W. Wood and referred to in his said report, responsive to which instructions, said report and its accompanying exhibits were prepared and made, and to afford the respondent an opportunity (a) to examine, analyze and challenge the propriety and materiality of said instructions, (b) to examine and cross-examine the said E. W. Wood in respect thereof and in respect of the statements and data contained in said report and exhibits, and (c) to explain and rebut said report and exhibits and any testimony in respect thereof. Respondent requests that the Commission hold an open hearing at which the information herein requested shall be disclosed to respondent and at which respondent shall have the opportunity to examine, cross-examine, analyze, explain and rebut as herein requested."

The Commission has at no time made the disclosures nor otherwise complied with said request, with the result that respondent has been deprived of its property without due process of law and denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 680] 12. The said orders of the Commission requiring respondent to file a schedule of rates as of June 30, 1925,

which shall produce to respondent net income not in excess of that found by the Commission in said orders to be fair and reasonable as of June 30, 1925 and the order of the Commission of July 9, 1934, ordering that respondent show cause why a further order shall not enter in this cause adopting, prescribing and substituting the so-called first or second suggested revision of existing schedules of respondent for the existing schedules of rates, deprive respondent of its property without due process of law and deny it the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States, in that:

(a) The rates of respondent now and heretofore in effect, including such rates as have been increased under the Robinson and Pence laws pursuant to bond, are and at all times have been the duly and lawfully established rates which respondent is entitled to charge for its service. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such service at any time prior to the effective date of a new order by the Commission.

(b) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

13. The said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

(a) That the fair value of respondent's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

[fol. 681] June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,523
December 31, 1928	122,417,736
December 31, 1929	134,765,516
December 31, 1930	145,683,04[illegible]

December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) That the net income of respondent from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) That respondent's net income from said intrastate business equalled an annual earning upon the said value of respondent's intrastate property at the following rates for the following years:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

(d) That the reasonable rates of return which respondent was entitled to earn upon said intrastate property were the following percentages for the following years:

[fol. 682] 1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ " " " "
1932 and 1933	5½ " " " "

(e) In its findings and orders of January 16 and March 1, 1934, the Commission found that respondent had collected during the period 1925 to 1932, inclusive, the sum of $13,289,172 in excess of a fair return upon the fair value

of its intrastate property used and useful in the service of the public and that such excess had been collected in the following amounts in the following years:

1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

Upon such findings so made the Commission ordered respondent to refund to its subscribers and telephone users said sums of money above set out, aggregating the sum of $13,289,172, with interest thereon, and ordered respondent to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until the further order of the Commission.

(f) In its finding and order of July 5, 1934, the Commission found that respondent had collected excess charges under bond in exchanges and its intrastate toll system for the following years in the following amounts:

[fol. 683]

	Exchange	Toll
1925	$1,137,195.00	$510,142.00
1926	1,637,314.00	234,399.00
1927	1,823,857.00	
1928	1,772,238.00	
1929	1,344,624.00	
1930	1,357,589.00	
1931	1,519,405.00	
1932	830,915.00	
Total	$11,423,137.00	$744,541.00

Upon such findings so made the Commission on July 5, 1934 ordered the respondent to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $744,541, and in the aggregate amount of $12,167,678, together with interest thereon at the rate of 6% per annum from the date of payment until the date of the refund.

(g) In its finding and order of September 6, 1934 the Commission found that respondent had collected excess charges under bond, as provided by law in exchanges, for local exchange service and its intrastate toll system, for intrastate toll services, for the following years in the following amounts:

	Exchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
Total	$11,423,137.00	$409,127.00

Upon such findings so made, the Commission, on September 6, 1934 ordered respondent to refund said alleged excess- [fol. 684] sive earnings in said respective amounts of $11,423,137 and $409,127, in the aggregate amount of $11,832,264, together with interest thereon at the rate of six per cent (6%) per annum from the date of payment until the date of refund.

Said findings and orders of the Commission are erroneous, arbitrary, unreasonable, invalid and confiscatory of respondent's property in that the fair value of respondent's said intrastate property in each of said years was largely in excess of the amounts so found by the Commission therefor; respondent's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by respondent were substantially lower than those which the Commission found respondent had earned in each of said years, and the return to which respondent was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and respondent had no excessive or unreasonable net income in any of said years, all as more particularly shown in paragraphs 14, 15, 16 and 17, infra.

14. The Commission erred in finding that the fair value of the respondent's intrastate property used and useful in

the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of respondent's intrastate property used and [fol. 685] useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

15. The Commission erred in finding that the net income of the respondent from its intrastate business in the State of Ohio available for a return upon its said intrastate property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence the Commission should have found that respondent's net income from such business available for a return upon such property, was in no year excessive and was not more than the following amounts in each of the following years:

1925	$5,956,673
1926	6,667,946
1927	7,202,348
1928	8,205,623
1929	8,153,593

1930	8,017,157
1931	8,065,229
1932	7,038,876
1933	6,160,952

16. The Commission erred in finding that respondent's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

[fol. 686]

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

The rates of return so found by the Commission are higher than the rates of return actually earned by respondent upon such property, in that, as shown by the evidence, the Commission found the fair value of respondent's intrastate property in each of such years to be too low as shown in paragraph 14 hereof, and found respondent's net income for each of such years to be substantially higher than it actually was, as shown in paragraph 15 hereof.

The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, respectively, as hereinafter in paragraph 17 set forth.

17. The Commission erred in finding that respondent was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence that the rates of return at which respondent was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission have deprived respondent of its property without due process of law and [fol. 687] have denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

18. The Commission erred in arriving at the fair value of the respondent's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied such price trends to all plant items purchased from Western Electric Company and included in the respondent's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to respondent. The telephone apparatus included in respondent's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by the use of such Western Electric prices for telephone apparatus obtained an alleged trend therefor, and then erroneously applied such trend, not only to the telephone apparatus in respondent's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of respondent's property, and its finding in this respect is arbitrary, and was unlawful and unreasonable.

19. The evidence showed that the prices charged by Western Electric Company to respondent for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by

Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of West-
[fol. 688] ern Electric Company in its Bell business and in its business with the respondent were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including respondent.

The appraisal introduced in evidence by respondent as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by respondent. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also included respondent's real estate at its market value and respondent's buildings at their fair value.

All subsequent additions to respondent's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by respondent therefor.

The Commission erred in determining the fair value of respondent's property by applying price trends of labor and material costs based upon the alleged experience of manufacturers other than Western Electric Company and upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

20. The Commission, in fixing the fair value of respondent's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Company in November, 1930, under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by
[fol. 689] it to respondent and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western

Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of respondent's intrastate property for each of the years 1930, 1931, 1932 and 1933.

21. The Commission erred in arriving at the fair value of respondent's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

22. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in respondent's books and shown by the evidence.

The actual cost of respondent's intrastate property, including cash working capital and materials and supplies as allowed by the Commission in said orders, were the following sums as of the following dates respectively:

[fol. 690]

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788

Date	Book Costs
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

23. The Commission erred in finding in its orders of January 16 and March 1, 1934 that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected from the subscribers and patrons of its intrastate service within the State of Ohio, the sum of $13,289,172, in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio and in finding and deciding that such excess earnings had been collected in the following amounts in the following years, towit:

Date	Amount
1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

The Commission erred in finding in its order of July 5, 1934 that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intrastate services, exchange and toll, within the State of Ohio, the sum of $12,-167,678 in excess of a fair return upon the fair value of its property actually used and useful in the service of the [fol. 691] public in Ohio, and in finding that such excess earnings had been collected in the following amounts in the following years, to-wit:

Year	Amount	
	Exchange	Toll
1925	$1,137,195	$510,142
1926	1,637,314	234,399
1927	1,823,857	.....
1928	1,772,238	.....
1929	1,344,624	.....

Year	Amount Exchange	Toll
1930	1,357,589	.....
1931	1,519,405	.....
1932	830,915	.....
Total	$11,423,137	$744,541

The Commission erred in finding in its order of September 6, 1934 that respondent in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intrastate services, exchange and toll, within the State of Ohio, the sum of $11,832,264 in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio, and in finding that such excess earnings had been collected in the following amounts in the following years, to-wit:

	Exchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
Total	$11,423,137.00	$409,127.00

[fol. 692] There was no evidence in the case which justified any finding by the Commission that any refund should be made with respect to any of the years in question, and no basis upon which the Commission's order for such refund could be sustained.

24. The Commission's findings and orders that respondent refund to the subscribers and patrons of its intrastate service within the State of Ohio the sums specifically set forth in the last preceding paragraph are illegal and void and are not sustained by any evidence in the record.

25. The Commission erred in overruling respondent's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and

in failing in said orders of January 16, March 1, July 5, July 9, and Sept. 6, 1934, to increase said value in the respects set forth in respondent's protest.

26. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the value of respondent's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;
(b) By eliminating the sum of $3,592,040 on account of going concern value;
(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;
(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the respondent's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred in reducing such tentative value by the sums [fol. 693] above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

In each of the foregoing respects, the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

27. The Commission erred in said findings and orders by failing to give any consideration to or including any allowance for the going concern value of respondent's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of respondent's property and found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. In said order it made an allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an estab-

lished plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value and in its orders fixing the same, the Commission not only eliminated any allowance for going value, but reduced the fair value of respondent's intrastate property as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1st, 1934, and all subsequent orders, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise in the valuation of respondent's property. The respondent was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived respondent of its property without due process of law, and denied to it the [fol. 694] equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

28. The Commission erred in arriving at the fair value of respondent's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by respondent during such respective years in telephone property in process of construction, viz:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

Respondent was entitled to have included in the fair value of its intrastate property the above amounts for each of the above years, because the sum so invested by it in property in process of construction, being devoted to the public service, respondent was constitutionally entitled to earn a return upon such property, and the Commission's failure to include such amounts deprived respondent of its

property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

29. The Commission erred in arriving at the fair value of respondent's said intrastate property in disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

[fol. 695] 30. The Commission erred in arriving at the fair value of respondent's said intrastate property, limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

31. The Commission erred in arriving at the fair value of respondent's intrastate property, in allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of respondent, as shown by the evidence.

32. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of respondent found by the Commission for each of the years 1925 to 1933 inclusive.

33. The Commission erred in finding that the actual existing depreciation in respondent's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of respondent's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own findings of fair value a sum on account of the existing depreciation in respondent's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Com-

mission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

34. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of respondent's intrastate property by deducting amounts [fol. 696] on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

35. The Commission erroneously disallowed and refused to include in respondent's reasonable and necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of respondent's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

In so doing the said findings and orders of the Commission deprive respondent of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

36. The Commission erroneously refused to permit a reduction from respondent's gross income of the following sums of money for each of the years 1925 to 1933, inclusive, representing the annual expense of amortization of the intrastate portion of respondent's landed capital:

1925	$57,506
1926	58,976
1927	58,536
1928	60,471
1929	47,347

1930	51,776
1931	50,339
1932	47,862

[fol. 697] 37. The Commission erred in allowing in respondent's said operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of only four per cent per annum of respondent's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of respondent's intrastate property:

1925	$4,972,486
1926	5,430,897
1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

38. Respondent's evidence of its annual depreciation and amortization expense was based upon the service life and salvage of the several classes of respondent's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933, inclusive, for respondent's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting in accordance with the Uniform System of Accounts, prescribed by the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General Code. The Commission also erred in disallowing entirely the company's expense of amortization of landed capital. The action of the Commission in so disallowing respondent's expense of amortization and reducing its expense of de-
[fol. 698] preciation to four per cent per annum deprives

respondent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

39. The amounts determined in said findings and order as representing the proper annual expense of depreciation are not only too low by reason of the fact that such percentages so applied in each year are too low, but also because such percentages have been applied to alleged property values which are in themselves too low.

40. The Commission erroneously refused to permit the deduction from respondent's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by respondent to the American Telephone and Telegraph Company on account of license contract services rendered by said company to respondent, viz:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

Said sums of money were paid by respondent to said American Telephone and Telegraph Company for services actually rendered by the latter to respondent which services were required by respondent in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow respondent to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives respondent of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 699] 41. The Commission erred in failing to make adjustments in respondent's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 35, 36 and 40, supra.

42. The reproduction cost new of the property of respondent used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, towit:

Account No.	
207	Right of Way.
211	Land.
222	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.
255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital, Including Supplies.
	Construction Work in Progress.

43. The fair value of respondent's property used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Com-[fol. 700] mission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect of such property as a whole and, specifically, as to each and all classes of such property.

44. The Commission erred in undervaluing the intrastate property of respondent, in increasing its revenues, decreasing its expenses and increasing its net income for each of said years, respectively, contrary to the law and the evidence.

45. The Commission erred in said order of March 1, 1934, effective nunc pro tunc as of January 16, 1934, in ordering that respondent, within ninety days from the date of the service of a copy of said order, prepare and file with the Commission new schedules prescribing rates, charges, tolls and rentals, for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the state and for intrastate toll service collected under bond which shall produce to respondent net income not in excess of that therein found to be fair and reasonable as of June 30, 1925.

46. The Commission erred in said order of March 1, 1934, in ordering respondent at the time of filing the aforementioned schedules to report to the Commission the amounts collected by respondent under bond from each exchange and for intrastate toll service, in excess of the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which a schedule went into effect providing for an increased rate; and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each year from 1925 to 1932, both inclusive, (a) the revenue produced by the rates and charges collected by respondent; (b) the [fol. 701] revenue that would have been produced by the rates and charges as set forth in the schedules therein ordered to be filed; (c) the net reduction in revenues; (d) the amount collected by respondent under bond in the various proceedings therein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedules therein ordered to be filed.

47. The Commission erred in said order of March 1, 1934, in ordering that respondent submit to the Commission the original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each, before the protested advances in rates.

48. The Commission erred in said order of March 1, 1934, in ordering respondent to begin and prosecute with

all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by respondent from the effective dates thereof and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz: $13,289,172.

The Commission erred in said order of July 5, 1934, in ordering respondent to show cause why it should not begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by respondent from the effective dates thereof, and also for the years 1925 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz: $12,167,678.

The Commission erred in said order of September 6, 1934 in ordering that respondent within 90 days therefrom refund in cash or credit upon existing indebtedness to each of its subscribers and patrons within each of the communities enumerated in Exhibit A of said order, and to the patrons who used its toll system, for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931, and 1932, the sums set forth [fol. 702] in said order and schedule A thereof, aggregating $11,832,264.00.

49. The Commission erred in said orders of March 1, 1934, July 5, 1934 and Sept. 6, 1934 in ordering that if any such moneys so ordered to be repaid shall nof have been claimed by the subscribers and patrons of respondent and of its connecting companies, entitled thereto in one year from the time the same shall become due and payable, as ordered by the Commission, all such unclaimed money shall be forthwith paid by respondent to the Treasurer of the County or other political subdivision in which such new schedule (unidentified by said order or otherwise) is effective, for the benefit tof its general fund.

50. The Commission erred in said order of March 1, 1934, in ordering that the schedule of rates, charges, tolls and rentals for all classes of respondent's intrastate service furnished in the State of Ohio, thereafter found and determined to be just and reasonable, be substituted for the schedules of respondent on file and under investigation in said cause and in the proceedings consolidated

therewith, and in its order of July 9, in ordering respondent to show cause as therein set forth.

51. The Commission erred in denying and in failing to comply with respondent's several applications and requests filed on the 17th day of February, 31st day of July, and the 25th day of September, 1934, asking among other things: (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by respondent for its services rendered in the State of Ohio to be no more than just the lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by respondent for its services until changed or modified in accordance with law; (2) that the Commission permit respondent in accordance with the request theretofore made by it and thereby renewed to introduce evidence of the fair value of its [fol. 703] property, its revenues and expenses and net income in each of said separate cases where respondent was and is collecting rates pursuant to bonds; and (3) that the Commission afford respondent an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January 16, 1934, and the Commission's method of applying the same, which information was at no time exhibited to respondent or introduced in any open hearing or made a part of the record in said cause, and to which information respondent never had access and as to which method it has never been informed.

The action of the Commission in so denying said applications and request has deprived respondent of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

52. The Commission erred in refusing and failing to grant respondent's application and request filed on the 31st day of July, 1934, and its protest, application and petition for rehearing in respect thereof filed August 29, 1934, that the Commission modify its findings and orders herein, and all of them, by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced; or

1. That the Commission afford respondent a hearing at which respondent should have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence should relate to the year 1934;

2. That the Commission permit respondent to prove the effect upon its net income for the year 1934 of putting into [fol. 704] effect either of the two proposed revisions of its schedules of rates referred to in the Commission's said order of July 9, 1934.

Respondent showed the Commission that, if permitted, it would prove that if either of the revisions of rates proposed by the Commission should be made effective, the result would be to reduce respondent's net income from its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

Such action of the Commission has deprived respondent of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

53. The Commission erred in its order of July 5, 1934 in that it required respondent to refund the following percentages of the increases in rates collected by it under bond in its several exchanges and for its toll system for the following years:

	Exchange	Toll
1925	100.00000%	100.00000%
1926	100.00000%	
1927	95.59084%	
1928	88.52068%	
1929	62.67606%	
1930	62.12778%	
1931	73.06314%	
1932	46.34134%	

The Commission erred in said order of July 5, 1934, in requiring said refunds to be made, and its order deprives respondent of its property without due process of law and denies it the equal protection of the laws in violation of the

Fourteenth Amendment to the Constitution of the United States for each of the reasons and upon each of the grounds hereinafter in subparagraphs (a), (b), (c) and (d) of Paragraph 60 set forth.

[fol. 705] 54. The Commission erred in its findings and orders of July 5, 1934 and September 6, 1934, in requiring respondent to repay unstated portions of its intrastate toll rates collected under bond "to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone services." Respondent cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by it, to make any refunds except to persons who are subscribers or patrons of respondent.

55. The Commission erred in its order of July 5, 1934, in requiring the repayment by respondent to its intrastate toll users of the sum of $510,142 for the year 1925 and the sum of $234,399 for the year 1926, without having made a determination of the fair value of respondent's property and its revenues, expenses and net income in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that respondent had made any excessive earnings in its toll system.

Respondent demanded the right to prove the fair value of its property used in rendering its intrastate toll service, and to show the revenues, expenses and net income from such property. The Commission refused to receive such evidence. Therefore it could make no valid order requiring any refunds to be made by respondent on account of toll rates collected under bond.

56. The Commission erred in ordering respondent to refund in any exchange or in its intrastate toll system in any year the sums set forth in its orders of July 5, 1934 and September 6, 1934 and in Schedule A attached to each of said orders, for the reason that there is no evidence in the record that the rates collected by respondent or its net income in any exchange or in its intrastate toll system in any year were unreasonable or excessive.

57. Respondent has been denied a fair trial and hearing in respect of the fair value of its property; it has been

[fol. 706] denied a fair trial and hearing in respect of whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond and it has been denied any trial with respect to the just and reasonable rates for its present and future service. Such denials have resulted in depriving respondent of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

58. The Commission was totally without any power, jurisdiction or authority to enter the order of July 5, 1934, the order of July 9, 1934 or the order of September 6, 1934.

59. In each and all of the foregoing respects complained of the Commission erred in denying respondent's protests and applications and petitions for a rehearing of said cause and in failing to grant the same.

60. The Commission erred in its order of September 6, 1934, in that it required respondent to refund the following percentages of the increases in rates collected by it under bond in its several exchanges for the following years:

	Exchange
1925	100.00000%
1926	100.00000%
1927	95.59084%
1928	88.52068%
1929	62.67606%
1930	62.12778%
1931	73.06314%
1932	46.34134%

and to refund to the patrons and subscribers of its intrastate toll system the sums of $232,282 and $176,845 for the years 1925 and 1926, respectively. The Commission erred in its said order of September 6, 1934 in requiring said re- [fol. 707] funds to be made and its order deprives respondent of its property without due process of law and denies it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States,

for each of the reasons and upon each of the grounds following:

(a) In arriving at said percentages the Commission refused to consider and determine, for each exchange separately and for respondent's toll system, the fair value of respondent's property and its revenues, expenses and net income, although respondent repeatedly demanded the right to offer such evidence;

(b) The Commission used an arbitrary method in ordering said refunds, viz: for each of the years in controversy a refund uniform for each exchange where rates were collected under bond, based upon a fixed percentage of the amount of the increases in rates collected under bond, which basis was wholly without support in the evidence;

(c) The Commission did not find that any of respondent's exchange or toll rates collected under bond were unreasonable or excessive for any year. Without such finding the Commission cannot under the applicable Ohio statutes order any refund;

(d) The amounts of the refunds have been based upon alleged excessive net income of respondent in its total business apportioned and allocated as between bonded and non-bonded cases, between respondent's exchanges and its toll system and among its several exchanges, by the purely arbitrary method hereinbefore described, by the application of which the Commission sought to avoid the necessity of determining that which the law requires it to determine, viz.: whether rates established under bond were unreasonable or excessive in each separate bond case and if so to what extent.

61. The Commission erred in its order of September 6, 1934 in requiring the repayment by respondent to its intrastate toll users of the sum of $232,282 for the year 1925 and the sum of $176,845 for the year 1926 without having made [fol. 708] a determination of the fair value of respondent's property and its revenues, expenses and net income in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that respondent had made any excessive earnings in its toll system.

The respondent demanded the right to prove the fair value of its property used in rendering its intrastate toll

service and to show the revenues, expenses and net income from such property. The Commission refused to receive such evidence. Therefore, it could make no valid order requiring any refunds to be made by respondent on account of toll rates collected under bond.

62. The Commission erred in its order of September 6, 1934 in the following respects and each thereof:

(a) It denied the protest and application and petition of the respondent asking, "for the reasons and upon the grounds set forth therein, among other things, a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein upon July 5, 1934";

(b) In finding, as set forth in said order of September 6, 1934, that it had "accorded said respondent ample opportunity to examine and consider all necessary and pertinent information requested" in respondent's application and request directed to the Commission's order of July 5, 1934, and in overruling said application and request;

(c) In overruling the verified return of respondent to the rule to show cause contained in the Commission's findings and orders of July 5, 1934 and the prayer thereof;

(d) In ordering that all protests and objections to the Commission's finding of July 5, 1934, filed and made by respondent, inconsistent with the order of September 6, 1934, be overruled.

63. In its findings of September 6, 1934, the Commission found that the alleged excess collections in the sum of $11,423,137 for exchange service and $409,127 for excess collec- [fol. 709] tions of intrastate toll service are refundable and subject to repayment by the company to the subscribers and patrons paying the same. The order of September 6, 1934 is erroneous, in that in said order respondent is directed to make exchange refunds to each of respondent's subscribers and patrons within each of the communities enumerated in Exhibit A of said order, and to make toll refunds to all of its patrons who used intrastate toll service.

64. The Commission further erred in its order of September 6, 1934 in that it required respondent within sixty days from the date of said order to report to the Commission the

amount of increase in rates which respondent had collected from the date of the filing of its bond until the first day of January, 1925, in each of the exchanges involved in the Advanced Utility Rate Proceedings consolidated in Cause No. 3307, which were instituted prior to January 1, 1925.

65. The Commission erred in its findings of September 6, 1934 in that it found that any refunds apportioned to connecting companies should, by such connecting companies, be repaid to their respective patrons, or if not claimed by such patrons within one year from the date payable, paid to the public treasury as thereinafter in said order provided, because, among other reasons, the Commission has not apportioned and cannot lawfully apportion any refunds to connecting companies; said connecting companies are not parties to this proceeding and the orders of the Commission are not binding upon them; and under no circumstances has the Commission power to nor may it lawfully order in this cause any refunds to be made to persons who were not subscribers or patrons of respondent.

66. The Commission erred in said order of September 6, 1934, in ordering that respondent within ninety days therefrom, refund in cash and/or credit upon existing indebtedness, to each of its subscribers and patrons within each of the communities enumerated on Exhibit A of said order, [fol. 710] the alleged excess or the proportion of the excess or increase which it collected under the bonds, duly given in the Advanced Utility Rate Proceedings enumerated in said Schedule A, within each of the years set forth from the year 1925 to and including the year 1932, as prescribed in said Schedule A, together with interest thereupon at the rate of six per cent per annum from the date of payment by the respective subscribers and patrons of said alleged excess charges to the date of such repayment.

67. The Commission erred in its order of September 6, 1934, in ordering respondent within ninety days therefrom, to refund to all patrons who used intrastate toll service in the years 1925 and 1926, the total alleged excess collections of $232,282 for the year 1925, and $176,845 for the year 1926, in the ratio of the increased charges of respondent to the total excess collection made by it under bond, for all intrastate toll service rendered by respondent individually and

jointly with connecting companies, together with interest thereupon at the rate of six per centum per annum from the date of payment by the respective subscribers and patrons of said alleged excess charges to the date of such repayment.

68. In each and all of the foregoing respects complained of the said proceedings, acts, findings and orders, and each and all thereof, of the Commission affect materially the substantial rights of respondent, are erroneous and prejudicial to it, and are unlawful, unreasonable and are not supported by evidence, are against the weight of the evidence and contrary to the evidence and the law, and in violation of the applicable Ohio Statutes and of Article 1, Section 1, of the Constitution of the State of Ohio, and further, are confiscatory and will, if enforced, result in the confiscation of respondent's property and deprive it of its property without due process of law, and deny to respondent the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 711] Wherefore, respondent prays that this protest, application and petition for rehearing be granted and respondent be accorded a rehearing in respect of each and all of the matters herein complained of; and that the findings and orders of the Commission entered in this cause on January 16, March 1, July 5, July 9, and September 6, 1934, and each and every thereof, be vacated, set aside and held for naught.

The Ohio Bell Telephone Company, by Randolph Eide, Its President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

[fol. 712] EXHIBIT U

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry by the Public Utilities Commission of Ohio, Upon Its Own Motion for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Application of The Ohio Bell Telephone Company for a Stay, Postponement and Suspension of the Enforcement of the Orders of The Public Utilities Commission of Ohio

The Ohio Bell Telephone Company, respondent herein, files this its application for an order staying, postponing and suspending the enforcement of, and excusing the respondent from obeying, the orders of The Public Utilities Commission of Ohio in this cause dated January 16, March 1, July 5, July 9 and September 6, 1934, and each and all of them, whether as originally entered or as supplemented and modified by later order, in so far as they order and direct respondent to make the repayments and refunds ordered by the Commission.

Respondent, in support of this application, shows:

[fol. 713] (1) There are pending in the Supreme Court of Ohio three petitions in error to reverse, vacate and set aside the findings and orders of the Commission made in this cause on January 16, March 1, July 5 and July 9, 1934, respectively. One such petition in error seeks to reverse, vacate and set aside the Commission's findings and orders as to the fair value of respondent's intrastate property used and useful in the service of the public in the state of Ohio. The other two petitions in error seek to reverse, vacate and set aside in their entirety such of said orders as are, respectively, complained of therein.

(2) Unless a rehearing of this cause be granted by the Commission, respondent intends to and will file in the Supreme Court of Ohio its further petition in error to reverse,

vacate and set aside the findings and order of the Commission of September 6, 1934, and each and all of said earlier findings and orders in so far as they are modified or supplemented by or form a basis for or are incorporated by reference, implication or inference in said order of September 6, 1934.

(3) On October 1, 1934, respondent filed herein its protest and application and petition for a rehearing of this cause.

(4) Respondent avers that said orders of the Commission are unlawful, unreasonable, in violation of the applicable statutes of Ohio and of section 1 of Article 1 of the Constitution of Ohio, and deprive respondent of its property without due process of law, and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and, further, that said orders are invalid because in the making of the same the Commission has exceeded its statutory authority and disregarded its statutory duty, all as set forth in respondent's various protests and applications and petitions for a rehearing of this cause, to which reference is hereby made.

(5) Unless the respondent shall secure the stay and suspension of the execution of said orders until the final decision of this cause by the Supreme Court of Ohio, respond- [fol. 714] ent will suffer irreparable loss, injury and damage in the following respects:

First, it will be compelled to make refunds within ninety days from and after September 6, 1934, to-wit: to its subscribers and patrons in the state of Ohio in the aggregate sum of $11,832,264, with interest, which money respondent will never be able to recover even though said orders shall be reversed, vacated and set aside;

Second, if respondent should refuse to comply with said orders of the Commission it will subject itself to the drastic penalties provided by the Ohio laws for such failure.

(6) As hereinbefore in this cause shown to the Commission, respondent has, under the Robinson and Pence laws, filed with the Commission bonds, approved by it, of such aggregate penalty, and its resources as shown by the record in this cause are such, that it is not necessary for the

Commission, as a condition of granting this application, to order the filing of any other or further bond. Nevertheless respondent offers to comply with any lawful and reasonable terms as to bond or otherwise, imposed by the Commission as a condition to the granting of this application.

(7) Respondent does not waive but fully reserves its right to apply to this Commission or to the Supreme Court of Ohio or to any other court for further or other orders staying, postponing and suspending the enforcement of such findings and orders of the Commission, whether with respect to refunds or otherwise.

Wherefore, respondent prays that an order be entered staying, postponing and suspending, as hereinabove set forth, the enforcement of and excusing the respondent from obeying the orders of this Commission, dated January 16, March 1, July 5, July 9 and September 6, 1934, respectively, and each and all of them, whether as originally entered or as modified or supplemented by later order, until the final [fol. 715] determination of this cause by the Supreme Court of Ohio.

The Ohio Bell Telephone Company, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys.

STATE OF OHIO,
County of Cuyahoga, ss:

Randolph Eide, being first duly sworn upon his oath says that he is President of The Ohio Bell Telephone Company, a corporation, respondent herein; that he makes this affidavit for and on behalf of respondent and has the power and authority so to do; that he has read the foregoing application for a stay, postponement and suspension, and is familiar with the allegations and facts therein stated, and that such allegations and facts are true.

Randolph Eide.

Subscribed and sworn to by the said Randolph Eide before me the undersigned, a Notary Public, on this 28th day of September, 1934. T. V. Koykka, Notary Public, in and for Cuyahoga County, Ohio. My Commission expires November 22, 1934. (Notarial Seal.)

[fols. 716-717] [File endorsement omitted]

[fol. 718] IN SUPREME COURT OF OHIO

No. 25023

[Title omitted]

PETITION IN ERROR OF THE OHIO BELL TELEPHONE COMPANY TO REVIEW FINDINGS AND ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO—Filed August 29, 1934

A

The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of September, 1921, a corporation duly organized under the laws of Ohio, with its principal office in the City of Cleveland, Ohio.

Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers stations, and of toll lines connecting said several and other exchanges, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in said state telephonic messages, and has been and now is a public utility within the meaning of the General Code of Ohio.

The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the "Commission," is [fol. 719] now and has been continuously since 1913 an administrative body created by the laws of the State of Ohio, with its office in the City of Columbus in said state, and has been during all of said time and is vested with the powers granted it by the laws of said state.

B

This proceeding in error is brought to obtain a reversal and vacation, for the reasons and upon the grounds hereinafter stated, of the findings and orders of the Commission made and entered on the 5th day of July and the 9th day of July 1934, in the cause hereinafter referred to, as well as of the findings and orders of the Commission of January 16, 1934 and March 1, 1934, heretofore complained of

in the petitions in error in causes numbered 24694 and 24695 now pending upon the docket of this Court, insofar as said findings and orders or either of them is modified or supplemented by, or form a basis for, or are incorporated by reference, implication or inference in said orders of July 5 and July 9, 1934.

By said orders of January 16, 1934 and March 1, 1934, the Commission ordered and directed plaintiff in error, first, to refund to its subscribers and patrons a portion of the rates collected by plaintiff in error for its intrastate telephone service in the State of Ohio during the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172, with interest, and, second, ordered and directed plaintiff in error to file with the Commission a schedule of reduced rates for its intrastate telephone service in the State of Ohio effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission.

In said order of July 5, 1934 the Commission found, among other things, that plaintiff in error had collected under bond in protesting exchanges and from its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $744,541 from such toll services, or a total of $12,167,678, being $1,121,494 less than said $13,289,172 ordered refunded in said orders of January 16 and March [fol. 720] 1, 1934; that the subscribers and patrons of plaintiff in error paying said excess charges were entitled to repayment of said sums, and that said repayment should be made; all as set forth in said order and in Schedule A thereof. By said order of July 5, 1934 the Commission, among other things, so modified all findings and orders theretofore made pertaining to excessive charges and collections, as to conform to said finding and order of July 5, 1934, and required plaintiff in error to show cause upon August 1, 1934 why the findings in said order should not be made final and an order issued putting said findings into effect and ordering repayment of said excess charges in accordance with said finding, as provided by law.

In said order of July 9, 1934 the Commission required that plaintiff in error show cause by August 1, 1934 why a further order should not enter in said cause adopting, prescribing and substituting for plaintiff in error's existing and presently effective schedules of rates, charges, tolls and ren-

tals "said first or said second revision of existing schedules" of plaintiff in error (referring to the hypothetical rate calculations, hereinafter referred to, contained in the "Rate and Revenue Data and Estimates" furnished by plaintiff in error to the Commission under protest on April 17, 1934, pursuant to the Commission's said order of March 1, 1934) and directing and requiring plaintiff in error thereupon to forthwith make the refunders ordered by the Commission in said cause.

Plaintiff in error's rates throughout said period were and now are of two kinds:

(a) Those filed with the Commission for separate exchanges and for its toll system, and, following the statutory protest and suspension, made the subject of a separate case in each instance and put into effect under separate bond approved by the Commission, all as hereinafter set forth.

(b) Those filed with the Commission and made effective without protest, suspension, bond or other condition.

[fol. 721] C

Prior to the 14th day of October, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence laws, respectively (108 Ohio Laws of 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for certain parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest and the separate schedule so protested had been made the subject of a separate case on the docket of the Commission, under an appropriate caption and number. In each such separate case the Commission, following such protest, had suspended the effective date of the schedule of rates for the period permitted by law and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter such rates had become effective in each such case pursuant to a separate bond filed therein by plaintiff in error with the Commission and approved by it. Each bond was conditioned for the repay-

ment by plaintiff in error of the portion of such increased rates thereafter, upon final hearing, determined by the Commission to be unreasonable or excessive.

In each such case plaintiff in error was proceeding to show separately the fair value of its property and its net income, and that the rates so made effective under bond were not unreasonable or excessive.

On said 14th day of October, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's property used and useful in the furnishing of its service and of its rates and charges for such service, and consolidated with said company-wide investigation all of the then pending separate cases, said company-wide investigation being numbered 3307 on the docket of the Commission.

[fol. 722] After the commencement of said company-wide investigation plaintiff in error filed schedules of increased rates for certain classes of its service in other separate exchanges, some of which schedules, as in the case of said separate cases previously mentioned, were suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. On January 16 and March 1, 1934, there were pending and undisposed of forty-five of such separate cases involving plaintiff in error's rates for its exchange services and one case involving its rates for its toll service. Plaintiff in error has filed with the Commission in such separate cases separate bonds in the aggregate penal sum of $14,166,768, all of which have been approved by the Commission and are now in full force and effect.

Instead of hearing and determining said cases separately the Commission in its orders herein complained of, has ordered plaintiff in error to make refunds based upon the Commission's findings as to the value of plaintiff in error's intrastate property as a whole and as to its entire net income arising from said property as a whole but without having found or determined the fair value of plaintiff in error's property, its revenues or expenses, or its net income, in respect of the separate exchanges and the toll system wherein such rates were made effective under bond as above stated.

D

On the 10th day of January, 1931, the Commission entered a tentative finding and order in said company-wide case in which it found the fair value of plaintiff in error's said property as a whole as of June 30, 1925, to be the sum of $104,282,735, copies of which said finding and order are attached hereto, marked respectively Exhibits A and B and made parts hereof.

Protest against such tentative finding and order was filed by plaintiff in error within thirty days after the entry thereof, a copy of which said protest is hereto attached, marked Exhibit C and made a part hereof, and thereafter the Commission received additional evidence of the fair [fol. 723] value of plaintiff in error's property, its revenues, expenses and net income as a whole.

On the 16th day of January, 1934, the Commission made the findings and entered the order in said company-wide case, heretofore referred to, copies of which said findings and order, marked respectively Exhibits D and E are hereto attached and made parts hereof.

On the 6th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its protest and application and petition for a rehearing in said company-wide cause No. 3307, a copy of which said protest and application and petition for rehearing is hereto attached, marked Exhibit F and made a part hereof.

On the 17th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its application and request (1) that the Commission modify said findings and order by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates thereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the said separate causes where plaintiff in error was and is collecting rates pursuant

to bond as provided in said Robinson and Pence laws, and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error has never had access.

[fol. 724] A copy of said application and request is hereto attached, marked Exhibit G and made a part hereof.

On the 1st day of March, 1934, the Commission, by its order of that date, overruled and denied said protest and application and petition for rehearing (heretofore identified as Exhibit F) and on the same day and in the same entry denied and overruled said application and request (heretofore identified as Exhibit G).

A copy of said order of March 1st, 1934, marked Exhibit H, is hereto attached and made a part hereof. Said entry of March 1st, 1934, purports to correct "as of and for the 16th day of January, 1934, nunc pro tunc" the original final order entered by the Commission on January 16, 1934 (heretofore identified as Exhibit E).

On the 9th day of March, 1934, prior to the effective date of said order of March 1, 1934, plaintiff in error filed its application and petition for a rehearing of this cause, a copy of which is hereto attached, marked Exhibit I and made a part hereof, and on the same day, the Commission denied the same.

On the 14th day of March, 1934, plaintiff in error filed its petitions in error against the Commission, as defendant in error, in causes Nos. 24694 and 24695 on the docket of this Court, to reverse and vacate said findings and orders of January 16 and March 1, 1934.

Pursuant to said orders of January 16 and March 1, 1934 plaintiff in error on the 17th day of April, 1934 duly submitted to the Commission, under written protest contained in an explanatory statement accompanying the same, certain "Rate and Revenue Data and Estimates," hereinafter referred to, which said data and estimates and statement were thereupon made a part of the record in said company-wide investigation, numbered 3307 on the docket of the Commission.

On the 5th day of July, 1934, the Commission made and entered in said cause the order referred to in paragraph (B) hereof, a copy of which, marked Exhibit J, is hereto attached and made a part hereof.

[fol. 725] On the 9th day of July, 1934, the Commission made and entered in said cause the order referred to in paragraph (B) hereof, a copy of which, marked Exhibit K, is hereto attached and made a part hereof.

On the 31st day of July, 1934, prior to the effective date of said orders of July 5 and July 9, 1934, plaintiff in error duly filed in said cause No. 3307 the following papers and documents, copies of which, marked respectively Exhibits L, M, N, O and P, are hereto attached and made parts hereof:

Application and request of plaintiff in error marked Exhibit L, with respect to the Commission's order of July 5, 1934.

Application and request of plaintiff in error marked Exhibit M, with respect to the Commission's order of July 9, 1934.

The verified return of plaintiff in error, marked Exhibit N, to the rule to show cause, contained in said order of July 5, 1934.

The verified return of plaintiff in error marked Exhibit O, to the rule to show cause, contained in said order of July 9, 1934.

Protest of plaintiff in error against said orders of July 5 and July 9, 1934, and application and petition of plaintiff in error for rehearing, marked Exhibit P.

In said protest and application and petition for rehearing, hereinabove referred to as Exhibit P, plaintiff in error urged and relied upon each and all of the grounds and specifications of error hereinafter set forth.

E

In said proceedings, acts, findings and orders, the Commission erred, as follows:

1. The Commission erred in taking into consideration and basing its said findings and orders upon alleged material and labor cost prices and trends obtained from various sources without plaintiff in error's knowledge, which were

[fol. 726] not offered or introduced in evidence and as to which plaintiff in error had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of plaintiff in error's property as of June 30, 1925, thereupon determined from the information above referred to and from price trends of Western Electric Company, erroneously compiled and applied as shown in Specification of Error No. 17, infra, composite price trend percentages, which it erroneously applied to plaintiff in error's entire intrastate property, exclusive of right of way and working capital.

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and plaintiff in error had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing. In the application and request filed by plaintiff in error as respondent with the Commission on the 17th day of February, 1934, the Commission was specifically requested

[fol. 727] "to afford the respondent an opportunity to examine and analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or

made a part of the record in this case and to which information the respondent has never had access."

The Commission after argument and a full hearing on said request made by plaintiff in error, denied the same in said order of March 1st, 1934.

The fair value of plaintiff in error's property was thus fixed and determined upon information and claimed proof which plaintiff in error had no opportunity to examine, cross-examine, analyze, explain or rebut, and plaintiff in error was accordingly denied a fair trial and hearing by the Commission.

On the 31st day of July, 1934, plaintiff in error filed its written request asking the Commission

"To disclose to respondent and afford it an opportunity to examine, analyze, explain and rebut the information used by this Commission in arriving at its findings and order of January 16, 1934, consisting of alleged material and labor cost prices and trends obtained from various sources without respondent's knowledge, which were not offered or introduced in evidence in any open hearing or made a part of the record in this case, and to which information respondent has never had access, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources."

[fol. 728] The Commission has wholly failed to comply with said request.

The findings and orders of the Commission based upon such claimed proof deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring plaintiff in error to file, effective retroactively, as of June 30, 1925, and thereafter until changed by the order of the Commission, such schedules of reduced rates for plaintiff in error's intrastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date.

The Commission in its findings and orders of January 16 and March 1, 1934, required plaintiff in error to file certain rate and revenue data and estimates. This order plaintiff in error complied with on April 17, 1934, under protest.

At the time plaintiff in error submitted to the Commission said "Rate and Revenue Data and Estimates" it advised the Commission in writing as follows:

"The Ohio Bell Telephone Company, respondent in the above entitled cause, herewith submits to your Commission 'Rate and Revenue Data and Estimates' required by your orders of January 16 and March 1, 1934. These data and estimates are furnished subject to the following reservations and conditions:

"1. Such data and estimates are not furnished voluntarily but under protest and solely for the purpose of avoiding the imposition of drastic and heavy penalties for non-compliance with such orders.

"2. Included in the data and estimates are statements by exchanges of monthly rates which, if applied to the respective services actually rendered by the company during the year 1925, will produce approximately the total net [fol. 729] income which the Commission found to be fair and reasonable for the year 1925. These data and estimates have been compiled on two bases—one applicable to both exchange and intrastate toll rates, and the other to exchange rates only. They are merely calculations made in order to accomplish the result required by the Commission, and are not proposed by the company as, and are not schedules of rates and are not filed or offered for filing.

"3. The rates referred to above, if applied to the services actually rendered by the company during each of the succeeding years 1926, 1927, 1928, 1929, 1930, 1931, 1932

and 1933, will not produce the net income which the Commission found to be reasonable for the company for each of such years, because, among other things, of variations in the kind and volume of the company's business and its revenues and expenses in each such year, and because of the differences in the net income found by the Commission to be reasonable for each of such years.

"In calculating the revenue effect of these hypothetical rates in 1925, the statement for that year covers the full calendar year although where rates were increased during 1925 the revenue effect of the hypothetical rates as compared with the inc-eased schedule has been calculated only for that portion of the year during which the increased rates were actually in effect. For the balance of the year the revenue effect, if any, has been based on the rates actually existing prior to the increase, and in cases where the hypothetical rate is higher than the actual rate in effect prior to the increase no revenue effect has been considered. Similarly, rate increases which became effective subsequent to 1925 were considered as they occurred and revenue effects calculated for subsequent years accordingly. These post-1925 increases constitute one of the reasons why the revenue effect of the hypothetical rates is greater in subsequent years, as is evident from the tabulation of revenue effects by years for the particular exchanges where the increased rates became effective subsequent to January 1, 1925.

"The approximate annual amount collected under bond as reflected in the attached statements, includes the difference, if any, between the present schedule and the in-
[fol. 730] terim schedule, for those exchanges where dual service was furnished and where an interim schedule of monthly rates for Private Branch Exchange service to any station within the dual local service area was filed and approved.

"4. By furnishing such data and estimates The Ohio Bell Telephone Company does not admit that the Commission's orders of January 16 and March 1, 1934, are valid or enforcible. On the contrary, the company denies that the Commission had any right in this cause to order the company to make refunds for any of the years 1925 to 1932, inclusive, or to order that schedules of reduced rates be filed, retroactively effective, and insists, for the reasons

heretofore stated in the company's protests and applications and petitions for a rehearing of this cause, that said orders are invalid, unlawful and unreasonable."

Said orders in this respect, if enforced, will deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

(a) The action of the Commission was an attempt by the device of requiring the filing of schedules of rates retroactively effective, to accomplish indirectly that which it could not directly do, viz.: to deprive plaintiff in error of the opportunity to earn a fair return upon the fair value of its property by reducing plaintiff in error's present rates, although they are now producing, as the Commission found in said orders, no more than a fair return on the present value of said property as found by the Commission.

(b) In said findings and orders of January 16 and March 1, 1934 the Commission found that for the year 1933 plaintiff in error was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that plaintiff in error's net income from said property for that year at its present rates did not exceed such a return. Any reduction in plaintiff in error's present rates would necessarily reduce [fol. 731] its net income below the amount found by the Commission to be fair, and would be unjust and unreasonable.

(c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive plaintiff in error of its property without due process of law and deny plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

(d) Under the applicable Ohio statutes the Commission had no authority to require plaintiff in error to file schedules of rates effective retroactively.

(e) Such order attempts unlawfully to reduce plaintiff in error's rates for its present and future service, by ordering plaintiff in error to make effective for such service rates not in issue in any of the separate bond cases and in respect of which no hearing or proof has been had.

In addition, the hypothetical rates contained in the "Rate and Revenue Data and Estimates" which plaintiff in error was compelled to and did furnish to the Commission on April 17, 1934, could not lawfully be made the basis of any order fixing rates for the future for plaintiff in error because:

(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to plaintiff in error's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of July 5, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount approximately $175,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

(b) The hypothetical rates contained in said "Rate and Revenue Data and Estimates," show on their face that if in effect during the years 1926 to 1932, inclusive, they would not have produced the reductions in revenue which the Commission found to be proper for said years respec-
[fol. 732] tively, either in its said orders of January 16 and March 1, 1934, or its order of July 5, 1934.

(c) Many of the decreases shown in the hypothetical rates in said "Rate and Revenue Data and Estimates" are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its order of July 5, 1934, required refunds to be made only with respect to rates made effective pursuant to bond, said hypothetical rates could have no application to the orders of the Commission of July 5 and July 9, 1934.

(d) The Commission had no right to fix rates for plaintiff in error's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of plaintiff in error for the year 1925. In determining rates for the present and future the Commission was required to consider the fair value of plaintiff in error's property, its revenues, expenses and net income for the most recent period available. Although the Commission, in determining the refunds to be ordered, found that even on the low value of plaintiff in error's intrastate property as fixed by the Commission for the year 1933, plaintiff in error was

earning only a barely compensatory return for that year and therefore upon such finding made no order of refund against plaintiff in error for said year nevertheless, it has refused to consider and give effect to the same evidence, in its orders in respect of plaintiff in error's present and future rates.

3. The Commission erred in its findings and orders in failing to continue the existing rates of plaintiff in error in effect for the present and the future. In the application and request filed by plaintiff in error with said Commission on the 17th day of February, 1934, plaintiff in error requested the Commission

"to modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and [fol. 733] lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until they are modified in accordance with law."

which application and request the Commission denied in its entry of March 1st, 1934, after a full hearing and argument.

On the 31st day of July, 1934, plaintiff in error again requested the Commission

"To modify its findings and orders herein and all of them by finding, deciding and ordering that the existing rates of respondent for its intrastate service in Ohio, are no more than just and reasonable; that under such rates respondent is earning less than a fair return; and such rates therefore cannot be reduced."

This request the Commission erroneously refused on August 1, 1934.

The Commission, notwithstanding its finding that plaintiff in error was earning no more than a barely compensatory return for the year 1933, is requiring a present reduction of rates which will deprive plaintiff in error of its property without due process of law and will deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The Commission erred in disregarding the testimony in the record and its own findings which show that for the year 1933 plaintiff in error was earning no more than a barely compensatory return.

In the verified return of plaintiff in error, Exhibit O, to the rule to show cause contained in the Commission's said order of July 9, 1934, plaintiff in error showed the Commission that if either of the revisions of its existing schedules proposed by the Commission should be adopted, prescribed or substituted for its existing schedules of rates, the result would be to reduce plaintiff in error's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

[fol. 734] On July 31, 1934, plaintiff in error filed the following written request with the Commission:

"Inasmuch as no evidence was received by the Commission as to the fair value of the respondent's property, its revenues, expenses and net income for any period subsequent to 1933, if the Commission proposes to establish or put into effect any new, revised or lower schedules of rates, in respect of respondent's intrastate service, in its several exchanges and in its toll system, the respondent requests the Commission:

(1) to afford the respondent a hearing at which the respondent shall have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence shall relate to the year 1934.

(2) to permit the respondent to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's order of July 9, 1934.

The respondent now shows the Commission that, if permitted, it will prove that if either of said proposed revisions should be made effective the result will be to reduce the respondent's net income on its intrastate business in Ohio for the year 1934 by more than $1,800,000, and to permit it to earn less than 3½ per cent for the year 1934 on

the present fair value of its property employed in its intrastate service in Ohio."

This request the Commission erroneously refused on August 1, 1934.

It was the duty of the Commission under the evidence in this cause and its own findings to determine that the existing rates of plaintiff in error were no more than just and lawful rates to be charged for the present and future until modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, plaintiff in error was entitled to a hearing and the right to introduce evidence as to the fair value of its property, its rev-
[fol. 735] enues, expenses, net income and fair rate of return for the year 1934.

The action of the Commission in this respect was erroneous and in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

4. As heretofore shown, plaintiff in error's rates throughout the period in controversy in said cause were of two kinds:

(a) Those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence Laws;

(b) Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

The Commission in its findings and orders of January 16 and March 1, 1934, having fixed the value of plaintiff in error's property, its revenues, expenses and net income for each of the years in controversy and the net income which plaintiff in error was entitled to earn under what the Commission found to be fair rates of return for each of the years, thereupon ordered plaintiff in error to refund to its subscribers and patrons the sum of $13,289,172, being the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction

as between rates collected pursuant to bond and rates not so collected.

By the Commission's order of July 5, 1934, plaintiff in error was directed to refund $11,423,137 to its subscribers paying the same in exchanges where rates paid by them were made effective pursuant to bonds, and $744,541 to its toll users in respect of toll rates which were collected pursuant to bonds; in the aggregate the sum of $12,167,678, a reduction of $1,121,494 attributable to alleged excess earnings of plaintiff in error in exchanges where rates were not collected pursuant to bond.

[fol. 736] In arriving at the amount of said refunds for each of said years the Commission erroneously used an unlawful method or device involving two apportionments and an allocation:

1st. An apportionment of the alleged excessive earnings of plaintiff in error for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between protesting exchanges, that is to say, exchanges wherein any rate had been collected under bond in any of the aforementioned years and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected;

2nd. An allocation to plaintiff in error's toll system of a part ($744,541.00) of the amount ($12,167,678.00) so apportioned to its protesting exchanges; and

3rd. An apportionment of the sum of $11,423,137 (the total amount plaintiff in error is required to refund in its several exchanges) among said several exchanges, all as listed on Schedule "A" attached to said order of July 5th.

The Commission erred in making all said apportionments and the allocation, upon which the refunds required by its order of July 5th are based, in the following respects and for the following reasons:

(a) Instead of considering the fair value of plaintiff in error's property and net earnings separately by exchanges and separately for its toll system, the Commission, in making said apportionments and allocation, unlawfully used and applied accounting methods and made calculations, having no relation to any property values and net earnings. It was impossible lawfully to make said apportionments and allocation by any such accounting methods and calculations.

(b) The Commission's method employed in making said apportionments and allocation was wholly arbitrary and not based upon any evidence in the case.

(c) The Commission failed and refused, as hereinbefore and hereinafter set forth, to permit plaintiff in error to introduce evidence as to the fair value of its property, its revenues, expenses and net income separately by exchanges and separately for its toll system. Instead, the Commission [fol. 737] based said apportionments and allocation on plaintiff in error's total exchange service revenues. No lawful apportionment or allocation of alleged excessive net earnings could be made on such basis, because the total exchange service revenues in a given exchange are in no sense evidence of net earnings in such exchange.

(d) Although total revenues could not lawfully be the basis for such apportionments and allocation, the Commission further erred in the application of its own unlawful method, in that, for the purpose of such apportionments and allocation, it considered exchange service revenues and ignored toll revenues, whereas in each of the years in controversy substantial revenues were received by plaintiff in error from its intrastate toll system.

5. Among the errors set forth in Specification of Error No. 4, the Commission further erred in its first apportionment, namely, that as between protesting and non-protesting exchanges, in the following respects and for the following reasons:

(a) It included as revenues from bonded rates in protesting exchanges for 1925 and 1926 revenues from seven exchanges in which no rates were collected pursuant to bond in one or both of said years, which said exchanges and the corresponding amounts of revenues which the Commission treated as bonded revenues in the years indicated are as follows:

1925

Exchange	Revenues
Canton	$711,940
Columbus	2,632,978
Coshocton	66,705
London	43,099
Sedalia	3,630

Exchange	Revenues
Springfield	453,237
Washington C. H.	84,880
Total	$3,996,469
1926	
Canton	750,709

[fol. 738] This single error increased the refunds ordered by the Commission for the years 1925 and 1926 by the principal sum of $335,414.

(b) It included as bonded revenues in each year, even though not collected pursuant to bond, revenues from all rates in every exchange in which any rate had been collected pursuant to bond, thereby erroneously increasing, by a substantial amount, the portion of said $13,289,172 of alleged excessive net earnings referable to increases collected under bond, and consequently the portion of such excessive net earnings subject to refund.

6. Among the errors set forth in Specification of Error No. 4, the Commission further erred in its allocation of alleged excess earnings to the toll system, in that:

The Commission refused to hear evidence offered by plaintiff in error as to the fair value of its intrastate toll system and the revenues, expenses and net income thereof. It did not even consider plaintiff in error's total intrastate toll revenues. Instead, the Commission, without evidence, arbitrarily allocated to plaintiff in error's intrastate toll system, and ordered refunded to plaintiff in error's toll users, such part of the total excess earnings apportioned by the Commission to the said protesting exchanges as could not be absorbed by the amounts collected under bond therein. Such refunds so ordered to be made to toll users amounted to the sums of $510,142 and $234,399 for the years 1925 and 1926, respectively, and nothing for any succeeding years, whereas the gross revenues in the toll system were greater in 1926 than in 1925 and greater in 1927 and in each succeeding year, to and including 1931, than in 1926.

7. Among the errors set forth in Specification of Error No. 4, the Commission erred in making its apportionment among the protesting exchanges in that:

By basing its first apportionment, namely, that as between protesting and non-protesting exchanges, on total exchange

service revenues, as hereinbefore in sub-paragraph (c) of Specification of Error No. 4 set forth, the Commission assumed that there was included in each dollar of such reve-
[fol. 739] nues the same amount of excessive net earnings. This use of exchange service revenues and the assumption that in each dollar of such revenues there was included the same amount of excessive net earnings, the Commission abandoned when apportioning the alleged excessive net earnings among the several protesting exchanges; in that in such apportionment the Commission calculated the percentage relation in each year between the amount of alleged excessive net earnings apportioned to protesting exchanges and the total revenues in fact collected under bond. This percentage, varying from year to year, the Commission applied to the total revenues collected under bond in each exchange. Had the Commission continued the use of the method applied in making the first apportionment, namely the apportionment between protesting and non-protesting exchanges, the refunds ordered would have been less than ordered by the principal sum of $4,640,364.

The Commission had no authority under any circumstances to require plaintiff in error to make refunds with respect to rates collected under bond without determining the fair value of plaintiff in error's property, its revenues, expenses and net income for each of its affected exchanges separately and for its toll system, and the Commission's refusal to permit plaintiff in error to introduce such evidence and the Commission's determination of the amount of such refunds, by the use of said method, apportionments and allocation, without having received such evidence deprived plaintiff in error of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The plaintiff in error was denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the orders requiring refunds made in this cause because of the following errors committed by the Commission:

(a) Prior to the 14th day of October, 1924, plaintiff in error or its precedecessor had filed with the Commission

pursuant to the provisions of the said Robinson and Pence [fol. 740] Laws, a number of separate schedules of increased rates for its service in separate exchanges and a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by plaintiff in error with and approved by the Commission;

(b) In each instance such schedule had been made the subject of a separate case on the dockets of the Commission and in each such case plaintiff in error was proceeding to show the fair value of its property and its revenues, expenses and net income, and that the rates so made effective pursuant to bond were no more than just and reasonable, when the Commission, on its own motion on said 14th day of October, 1924, instituted its own company-wide investigation of plaintiff in error's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit";

(c) Plaintiff in error repeatedly urged during the progress of the hearings before the Commission that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues, expenses, net income and fair rate of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and repeatedly demanded the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates made effective under bonds were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the plaintiff in error "has always insisted upon the right to present and has offered to present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence laws;

[fol. 741] (d) The Commission refused to permit the introduction of evidence with respect to the fair value of plaintiff in error's property, its revenues, expenses, net income and fair rate of return in such separate exchanges and in its toll system and denied plaintiff in error a hearing in respect thereof.

Said refunds therefore were ordered erroneously, arbitrarily and without any evidence upon which they can be sustained.

9. The Commission erred in its order of July 5, 1934, determining the amount of refunds separately for each of the exchanges listed on Exhibit "A" attached thereto and for plaintiff in error's intrastate toll system, by refusing to take into consideration the fair value of the plaintiff in error's property, its revenues, expenses and net earnings in each of said separate exchanges and in said toll system, in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

10. The Commission was required by the applicable statutes and under the terms of plaintiff in error's bonds to make a determination of the reasonableness or unreasonableness of plaintiff in error's rates in each specific case where such rates had become effective pursuant to bond.

Such determination could only have been lawfully made by taking into consideration the fair value of plaintiff in error's property, its revenues, expenses and net income for each separate exchange and for its toll system. While the Commission fixed the amount to be refunded by plaintiff in error for each exchange and for its toll system, it did so without any determination, based upon evidence that the rates collected pursuant to bond were unreasonable or excessive in any such exchange or in plaintiff in error's toll system.

Therefore, the said orders of the Commission made in this case do not comply with the requirements of the Ohio law and are erroneous, unlawful, unreasonable and void.

[fol. 742] 11. The said orders of the Commission requiring plaintiff in error to file a schedule of rates as of June 30, 1925, which shall produce to plaintiff in error net income not in excess of that found by the Commission in said orders

to be fair and reasonable as of June 30, 1925, and the order of the Commission of July 9, 1934, ordering that plaintiff in error show cause why a further order shall not enter adopting, prescribing and substituting the so-called first or second suggested revision of existing schedules of plaintiff in error for the existing schedules of rates are erroneous, unlawful and unreasonable and deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States, in that:

(a) The rates of plaintiff in error now and heretofore in effect, including such rates as have been increased under the Robinson and Pence laws pursuant to bond, are and at all times have been the duly and lawfully established rates which plaintiff in error is entitled to charge for its service. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such service at any time prior to the effective date of a new order by the Commission.

(b) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

12. The findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

[fol. 743] (a) That the fair value of plaintiff in error's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576

December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) That the net income of plaintiff in error from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) That plaintiff in error's net income from said intrastate business equalled an annual earning upon the said value of plaintiff in error's intrastate property at the following rates for the following years:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

[fol. 744] (d) That the reasonable rates of return which plaintiff in error was entitled to earn upon said intrastate property were the following percentages for the following years:

1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ " " " "
1932 and 1933	5½ " " " "

(e) In its findings and orders of January 16 and March 1, 1934, the Commission found that plaintiff in error had collected during the period 1925 to 1932, inclusive, the sum

of $13,289,172 in excess of a fair return upon the fair value of its intrastate property used and useful in the service of the public and that such excess had been collected in the following amounts in the following years:

1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

Upon such findings so made the Commission ordered plaintiff in error to refund to its subscribers and telephone users said sums of money above set out, aggregating the sum of $13,289,172, with interest thereon, and ordered plaintiff in error to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until the further order of the Commission.

In its finding and order of July 5, 1934, the Commission found that plaintiff in error had collected excess charges under bond in exchanges and in its intrastate toll system for the following years in the following amounts:

[fol. 745]

	Exchange	Toll
1925	$1,137,195.00	$510,142.00
1926	1,637,314.00	234,399.00
1927	1,823,857.00	
1928	1,772,238.00	
1929	1,344,624.00	
1930	1,357,589.00	
1931	1,519,405.00	
1932	830,915.00	
Total	$11,423,137.00	$744,541.00

Upon such findings so made the Commission ordered the plaintiff in error to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $744,541, and in the aggregate amount of $12,167,678, together with in-

terest thereon at the rate of 6% per annum from the date of payment until the date of the refund.

The findings and orders of the Commission are erroneous, arbitrary, unreasonable, invalid and confiscatory of plaintiff in error's property in that the fair value of plaintiff in error's said intrastate property in each of the years 1925 to 1933 inclusive was largely in excess of the amounts so found by the Commission therefor; plaintiff in error's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by plaintiff in error were substantially lower than those which the Commission found plaintiff in error had earned in each of said years, and the return to which plaintiff in error was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and plaintiff in error had no excessive or unreasonable net income in any of said years, all as more particularly shown in Specifications of Error Nos. 13, 14, 15 and 16, infra.

13. The Commission erred in finding that the fair value of the plaintiff in error's intrastate property used and useful in the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
[fol. 746] June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of plaintiff in error's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

14. The Commission erred in finding that the net income of the plaintiff in error from its intrastate business in the State of Ohio available for a return upon its said intrastate

property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence the Commission should have found that plaintiff in error's net income from such business available for a return upon such property, was not more than the following amounts in each of the following years:

[fol. 747] 1925	$5,956,673
1926	6,667,946
1927	7,202,348
1928	8,205,623
1929	8,153,593
1930	8,017,157
1931	8,065,229
1932	7,038,876
1933	6,160,952

15. The Commission erred in finding that plaintiff in error's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrasate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

The rates of return so found by the Commission are higher than the rates of return actually earned by plaintiff

in error upon such property, in that, as shown by the evidence, the Commission found the fair value of plaintiff in error's intrastate property in each of such years to be too low as shown in Specification of Error No. 13 hereof, and found plaintiff in error's net income for each of such years to be substantially higher than it actually was, as shown in Specification of Error No. 14 hereof.

The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned by plaintiff in error upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, [fol. 748] respectively, as hereinafter in Specification of Error No. 16 set forth.

16. The Commission erred in finding that plaintiff in error was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

The Commission should have found upon the evidence that the rates of return at which plaintiff in error was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

17. The Commission erred in arriving at the fair value of the plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied such price trends to all plant items purchased from Western Electric Company and included in the plaintiff in error's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those

of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to plaintiff in error. The telephone apparatus included in plaintiff in error's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by the use of such Western Electric prices for telephone apparatus obtained [fol. 749] an alleged trend therefor, and then erroneously applied such trend, not only to the telephone apparatus in plaintiff in error's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of plaintiff in error's property, and its finding in this respect was arbitrary, erroneous and was unlawful and unreasonable.

18. The evidence showed that the prices charged by Westtern Electric Company to plaintiff in error for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of Western Electric Company in its Bell business and in its business with the plaintiff in error were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including plaintiff in error.

The appraisal introduced in evidence by plaintiff in error as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by plaintiff in error. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also included plaintiff in error's real estate at its market value and its buildings at their fair value.

All subsequent additions to plaintiff in error's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at

labor and material prices actually paid by plaintiff in error therefor.

The Commission erred in determining the fair value of plaintiff in error's property by applying price trends of [fol. 750] labor and material costs based upon the alleged experience of manufacturers other than Western Electric Company and upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

19. The Commission, in fixing the fair value of plaintiff in error's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Company in November, 1930, under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st. 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Companies for telephone apparatus, so that on July 1st. 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

20. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for the years [fol. 751] 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

21. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

The actual cost of plaintiff in error's intrastate property including cash working capital and materials and supplies as allowed by the Commission in said orders, were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

22. The Commission erred in finding in its orders of January 16 and March 1, 1934, that plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected from the subscribers and patrons of its intrastate service within the State of Ohio, the sum of $13,289,172 in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio, and in finding and deciding that such excess earnings had been collected in the following amounts in the following years, towit:

Date	Amount
[fol. 752] 1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347

Date	Amount
1930	1,481,689
1931	1,659,760
1932	908,335
Total	$13,289,172

The Commission erred in finding in its order of July 5, 1934 that the plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intra-state services, exchange and toll, within the State of Ohio, the sum of $12,167,678.00 in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio, and in finding that such excess earnings had been collected in the following amounts in the following years, to-wit:

	Amount	
Year	Exchange	Toll
1925	$1,137,195	$510,142
1926	1,637,314	234,399
1927	1,823,857	
1928	1,772,238	
1929	1,344,624	
1930	1,357,589	
1931	1,519,405	
1932	830,915	
Total	$11,423,137	$744,541

There was no evidence in the case which justified any finding by the Commission that any refund should be made with respect to any of the years in question, and no basis upon which the Commission's order for such refund can be sustained.

[fol. 753] 23. The Commission's findings and orders that plaintiff in error refund to the subscribers and patrons of its intrastate service within the State of Ohio the sums specifically set forth in the last preceding specification of error are illegal and void and are not sustained by any evidence in the record.

24. The Commission erred in overruling plaintiff in error's protest against the value of its property tentatively found and determined by the Commission as of June 30,

1925, and in failing in said orders of January 16, 1934, March 1st, 1934, July 5, 1934 and July 9, 1934, to increase said value in the respects set forth in plaintiff in error's protest.

25. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the value of plaintiff in error's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value;

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the plaintiff in error's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred in reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

In each of the foregoing respects, the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the [fol. 754] equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

26. The Commission erred in said findings and orders by failing to give any consideration to or to include any allowance for the going concern value of plaintiff in error's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of plaintiff in error's property and found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. In said order it made and allowance therefor separately and did not include in its detailed valuation

of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value and in its orders fixing the same, the Commission not only eliminated any allowance for going value, but reduced the fair value of plaintiff in error's intrastate property as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1st, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise in the valuation of plaintiff in error's property. Plaintiff in error was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived plaintiff in error of its property without due process of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

27. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by plaintiff in error during such respective years in telephone property [fol. 755] in process of construction, viz:

1925	$2161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

Plaintiff in error was entitled to have included in the fair value of its intrastate property the above amounts for each of the above years, because the sum so invested by it in property in process of construction, being devoted to the public service, plaintiff in error was constitutionally entitled to earn a return upon such property, and the Commission's failure to include such amounts deprived plain-

tiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

28. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property by disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect to the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

29. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property, by limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

30. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property, in allowing only [fol. 756] one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error, as shown by the evidence.

31. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of plaintiff in error found by the Commission for each of the years 1925 to 1933, inclusive.

32. The Commission erred in finding that the actual existing depreciation in plaintiff in error's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own findings of fair value a sum on account of the existing depreciation in plaintiff in error's

intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

33. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

34. The Commission erroneously disallowed and refused to include in plaintiff in error's reasonable and necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of plaintiff in error's depreciable property:

[fol. 757] 1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

35. The Commission erroneously refused to permit a reduction from plaintiff in error's gross income of the following sums of money for each of the years 1925 to 1933, inclusive, representing the annual expense of amortization of the intrastate portion of plaintiff in error's landed capital:

1925	$57,506
1926	58,976
1927	58,536

1928	60,471
1929	47,347
1930	51,776
1931	50,339
1932	47,862

36. The Commission erred in allowing in plaintiff in error's said operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of only four per cent per annum of plaintiff in error's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of plaintiff in error's intrastate property:

[fol. 758] 1925	4,972,486
1926	5,430,897
1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

37. Plaintiff in error's evidence of its annual depreciation and amortization expense was based upon the service life and salvage of the several classes of plaintiff in error's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933, inclusive, for plaintiff in error's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting in accordance with the Uniform System of Accounts, prescribed by the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General Code. The Commission also erred

in disallowing entirely plaintiff in error's expense of amortization of landed capital. The action of the Commission in so disallowing plaintiff in error's expense of amortization and reducing its expense of depreciation to four per cent per annum deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

38. The amounts determined in said findings and orders as representing the proper annual expense of depreciation are not only too low by reason of the fact that such percentages so applied in each year are too low, but also be- [fol. 759] cause such percentages have been applied to alleged property values which are in themselves too low.

39. The Commission erroneously refused to permit the deduction from plaintiff in error's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by plaintiff in error to the American Telephone and Telegraph Company on account of license contract services rendered by said company to plaintiff in error, viz:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

Said sums of money were paid by plaintiff in error to said American Telephone and Telegraph Company for services actually rendered by the latter to plaintiff in error which services were required by plaintiff in error in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow plaintiff in error to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

40. The Commission erred in failing to make adjustments in plaintiff in error's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 34, 35 and 39, supra.

41. The reproduction cost new of the property of plaintiff in error used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and de- [fol. 760] termined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to-wit:

Account No.	
207	Right of Way.
211	Land.
222	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.
255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital Including Supplies.
	Construction Work in Progress.

42. The fair value of plaintiff in error's property used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to such property as a whole and, specifically, as to each and all classes of such property.

43. The Commission erred in undervaluing the intrastate property of plaintiff in error, in increasing its revenues, decreasing its expenses and increasing its net income for each of said years, respectively, contrary to the law and the evidence.

[fol. 761] 44. The Commission erred in said order of March 1, 1934, effective nunc pro tunc as of January 16, 1934, in ordering that plaintiff in error, within ninety days from the date of the service of a copy of said order, prepare and file with the Commission new schedules prescribing rates, charges, tolls and rentals, for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the state and for intrastate toll service collected under bond which shall produce to plaintiff in error net income not in excess of that therein found to be fair and reasonable as of June 30, 1925.

45. The Commission erred in said order of March 1, 1934, in ordering plaintiff in error at the time of filing the aforementioned schedules to report to the Commission the amounts collected by plaintiff in error under bond from each exchange and for intrastate toll service, in excess of the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which a schedule went into effect providing for an increased rate; and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each year from 1925 to 1932, both inclusive, (a) the revenue produced by the rates and charges collected by plaintiff in error; (b) the revenue that would have been produced by the rates and charges as set forth in the schedules therein ordered to be filed; (c) the net reduction in revenues; (d) the amount collected by plaintiff in error under bond in the various proceedings therein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedules therein ordered to be filed.

46. The Commission erred in said order of March 1, 1934, in ordering that plaintiff in error submit to the Commission [fol. 762] the original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each, before the protested advances in rates.

47. The Commission erred in said order of March 1, 1934, in ordering plaintiff in error to begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by plaintiff in error from the effective dates thereof and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz: $13,289,172.

The Commission erred in said order of July 5, 1934, in ordering plaintiff in error to begin and prosecute with all diligence the repayments to its subscribers and patrons of such portion of the increased rates charged and collected by plaintiff in error from the effective dates thereof, and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932 as the Commission had found to be unreasonable and excessive, viz: $12,167,678.

48. The Commission erred in said orders of March 1, 1934, and July 5, 1934 in ordering that if any such moneys so ordered to be repaid shall not be claimed by the corporation or persons entitled thereto in one year from the time the same shall become due and payable, as ordered by the Commission, such money shall be paid to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund and in such amounts and in such manner as the Commission might order.

49. The Commission erred in said order of March 1, 1934 in ordering that the schedule of rates, charges, tolls and rentals for all classes of plaintiff in error's intrastate service furnished in the State of Ohio thereafter found and determined to be just and reasonable be substituted for the schedules of plaintiff in error on file and under investigation in said cause and in the proceedings consolidated therewith, and in its order of July 9, in ordering plaintiff in error to show cause as therein and hereinabove set forth.

[fol. 763] 50. The Commission erred in denying and in failing to comply with plaintiff in error's several applications and requests filed on the 17th day of February and 31st day of July, 1934, asking among other things: (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be no more than just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where plaintiff in error was and is collecting rates pursuant to bonds; as provided in said Robinson and Pence Laws; and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the commission in arriving at said findings and order of January 16, 1934, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause, and to which information plaintiff in error had never had access.

The action of the Commission in so denying said application and request has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

51. In each and all of the foregoing respects complained of the Commission erred in denying plaintiff in error's protests and applications and petitions for a rehearing of said cause and in failing to grant the same.

52. The Commission erred in refusing plaintiff in error's application and request filed on the 31st day of July, [fol. 764] 1934, that the Commission modify its findings and orders herein and all of them by finding, deciding and ordering that the existing rates of plaintiff in error for its intrastate service in Ohio are no more than just and reasonable; that under such rates plaintiff in error is earning less than a fair return; and such rates therefore cannot be reduced; or

1. That the Commission afford plaintiff in error a hearing at which plaintiff in error should have the opportunity to introduce evidence as to the present fair value of its intrastate property by separate exchanges and in its toll system, its revenues, expenses, net income and fair rate of return, all of which evidence should relate to the year 1934;

2. That the Commission permit plaintiff in error to show the effect upon its net income for the year 1934 of putting into effect either of the two proposed revisions of its schedules of rates referred to in the Commission's said order of July 9, 1934.

Plaintiff in error showed the Commission that, if permitted, it would prove that if either of the revisions of rates proposed by the Commission should be made effective, the result would be to reduce plaintiff in error's net income from its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio.

The action of the Commission in so denying said application and request has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

53. The Commission erred in its order of July 5, 1934 in that it required plaintiff in error to refund the following percentages of the increases in rates collected by it under bond in its several exchanges and for its toll system for the following years:

[fol. 765]

	Exchange	Toll
1925	100.00000%	100.00000%
1926	100.00000%	42.76667%
1927	95.59084%	.....
1928	88.52068%	.....
1929	62.67606%	.....
1930	62.12778%	.....
1931	73.06314%	.....
1932	46.34134%	.....

The Commission erred in said order of July 5, 1934, in requiring said refunds to be made and its order deprives plaintiff in error of its property without due process of law and denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States for each of the following reasons and upon each of the following grounds:

(a) In arriving at said percentages the Commission refused to consider and determine for each exchange separately and for plaintiff in error's toll system the fair value of plaintiff in error's property and its revenues, expenses and net income, although plaintiff in error repeatedly demanded the right to offer such evidence;

(b) The Commission used an arbitrary method in ordering said refunds, viz: for each of the years in controversy a refund uniform for each exchange where rates were collected under bond, based upon a fixed percentage of the amount of the increases in rates collected under bond, which basis was wholly without support in the evidence;

(c) The Commission did not find that the rates collected under bond were unreasonable and excessive with respect to any exchange or with respect to plaintiff in error's toll system for any year. Without such a finding the Commission cannot under the applicable Ohio statute order any refund;

(d) The amounts of the refunds have been based upon alleged excessive net income of plaintiff in error in its total business apportioned and allocated as between bonded and non-bonded cases, between plaintiff in error's exchanges and its toll system and among its several exchanges by the [fol. 766] purely arbitrary method hereinbefore described, by the application of which the Commission sought to avoid the necessity of determining that which the law requires it to determine, viz: whether rates established under bond were unreasonable or excessive in each separate bond case and if so to what extent.

54. The Commission erred in its findings and order of July 5, 1934, in requiring plaintiff in error to repay unstated portions of its intrastate toll rates collected under bond "to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such persons and patrons to telephone companies

other than The Ohio Bell Telephone Company because of the interchange of telephone service." Plaintiff in error cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by it to make any refunds except to persons who are its subscribers or patrons.

55. The Commission erred in its order of July 5, 1934, in requiring the repayment by plaintiff in error to its intrastate toll users of the sum of $510,142 for the year 1925 and the sum of $234,399 for the year 1926, without having made a determination of the fair value of plaintiff in error's property and its revenues, expenses and net income in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that plaintiff in error had made any excessive earnings in its toll system. The plaintiff in error demanded the right to prove the fair value of its property used in rendering its intrastate toll service, and to show the revenues, expenses and net income from such property. The Commission refused to receive such evidence. In view of these facts it could make no valid order requiring any refunds to be paid by plaintiff in error on account of toll rates collected under bond.

56. The Commission erred in ordering plaintiff in error to refund in any exchange or in its intrastate toll system [fol. 767] in any year the sums set forth in its order of July 5, 1934 and in Schedule A attached thereto, for the reason that there is no evidence in the record that the rates collected by plaintiff in error or its net income in any exchange or in its intrastate toll system in any year were unreasonable or excessive.

57. Plaintiff in error has been denied a fair trial and hearing in respect of the fair value of its property; it has been denied a fair trial and hearing in respect of whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond and it has been denied any trial with respect to the just and reasonable rates for its present and future service. Such denials have resulted in depriving plaintiff in error of its property without due process of law and denying it the equal protection of the laws in violation of

the Fourteenth Amendment to the Constitution of the United States.

58. The Commission was totally without any power, jurisdiction or authority to enter either the order of July 5, 1934 or the order of July 9, 1934.

59. In each and all of the foregoing respects complained of, the said proceedings, acts, findings and orders of the Commission and each and all thereof affect materially the substantial rights of plaintiff in error, are erroneous and prejudicial to it and are unlawful, unreasonable and are not supported by evidence, are against the weight of the evidence and contrary to the evidence and the law and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and deprive it of its property without due process of law, and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 768] Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for a rehearing filed by it in cause No. 3307 on the docket of the Commission.

Wherefore, plaintiff in error prays that said findings and orders of defendant in error, The Public Utilities Commission of Ohio, made and entered in said cause No. 3307 on the docket of said Commission on January 16, March 1, July 5 and July 9, 1934, and each of them, be reversed, vacated and set aside by this Court as unlawful and unreasonable, and that plaintiff in error may be restored to all things lost by reason of the aforesaid findings and orders.

The Ohio Bell Telephone Company, Plaintiff in Error, by Randolph Eide, President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Its Attorneys. (Seal.)

[fol. 769] *Duly sworn to by Randolph Eide. Jurat omitted in printing.*

[fol. 770] IN SUPREME COURT OF OHIO

No. 25023

[Title omitted]

PRÆCIPE FOR SUMMONS IN ERROR—Filed August 29, 1934

To the Clerk:

Issue summons in error in this cause for Public Utilities Commission of Ohio, Columbus, Ohio, defendant in error, directed to the Sheriff of Franklin County, Ohio, returnable according to law.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 771]

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P to Petition in Error

[fol. 772] A—Tentative Finding of January 10, 1931.

B—Order of January 10, 1931, fixing value.

C—Protest of The Ohio Bell Telephone Company to value fixed in order of January 10, 1931.

D—Findings of January 16, 1934.

E—Order of January 16, 1934.

F—Application for rehearing of January 16, 1934 order.

G—Application and Request of The Ohio Bell Telephone Company for February 17, 1934.

H—Order of March 1, 1934.

I—Application for rehearing of March 1, 1934 order.

J—Order of July 5, 1934.

K—Order of July 9, 1934.

L—Application and Request of The Ohio Bell Telephone Company of July 31, 1934 with respect to the order of July 5, 1934.

M—Application and Request of The Ohio Bell Telephone Company of July 31, 1934 with respect to the order of July 9, 1934.

N—Verified Return to the order to show cause contained in the order of July 5, 1934.

O—Verified Return to the order to show cause contained in the order of July 9, 1934.

P—Protest and Application for rehearing of July 5 and July 9, 1934 orders.

* * * * * * *

[fols. 773-774] [File endorsement omitted]

[fol. 775] IN SUPREME COURT OF OHIO

No. 24695

[Title omitted]

PETITION IN ERROR OF THE OHIO BELL TELEPHONE COMPANY TO REVIEW THE FINDINGS AND ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO, DATED JANUARY 16 AND MARCH 1, 1934, ASCERTAINING AND FINDING THE VALUE OF THE INTRASTATE PROPERTY OF THE OHIO BELL TELEPHONE COMPANY IN CAUSE NO. 3307 ON THE DOCKET OF SAID COMMISSION—Filed March 14, 1934.

A

The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of September, 1921, a corporation duly organized under the laws of Ohio, with its principal office in the City of Cleveland, Ohio.

Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers' stations, and of toll lines connecting said several exchanges, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in said state telephonic messages, and has been and now is a public utility within the meaning of the General Code of Ohio.

[fol. 776] The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the "Commission," is now and has been continuously since 1913 an administrative body created by the laws of the State of

Ohio, with its office in the City of Columbus in said state, and has been during all of said time and is vested with the powers granted it by the laws of said state.

B

This proceeding in error is brought in pursuance of Section 499-16 and Section 544 of the General Code of Ohio to obtain a reversal and vacation, for the reasons and upon the grounds hereinafter stated, of the findings and orders of the Commission ascertaining and fixing the value of the intrastate property of plaintiff in error, made and entered on the 16th day of January, and the 1st day of March, 1934, in cause No. 3307 on the docket of the Commission.

The ascertainment and findings of value as to which the plaintiff in error seeks a reversal and vacation are as follows:

Date	Value of Intrastate Property as Fixed by the Commission
June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

Using said values as the rate base for said years, respectively, the Commission in said findings and order of January 16, 1934, and in a later order dated March 1st, 1934 purporting to correct said order of January 16, 1934, all hereinafter more particularly described, ordered and directed plaintiff in error, first, to refund to its subscribers and patrons a portion of the rates collected by plaintiff in error for its intrastate telephone service in the State [fol. 777] of Ohio during the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172 with interest, and, second, ordered and directed the plaintiff in error to file with the Commission a schedule of reduced rates for its intrastate telephone service in the State of Ohio effective retroactively as of June 30, 1925, and thereafter until changed by the order of the Commission.

The Commission's said finding and ascertainment of values were prerequisite to and the basis of the portion of said order requiring the plaintiff in error to refund said sum of $13,289,172, with interest as aforesaid, and requiring it to file such schedule of reduced rates effective retroactively as of June 30, 1925 and thereafter until changed by order of the Commission.

C

Prior to the 14th day of October, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence laws, respectively, (108 Ohio Laws 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for certain parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest and the separate schedule so protested had been made the subject of a separate case on the docket of the Commission, under an appropriate caption and number. In each such separate case the Commission, following such protest, had suspended the effective date of the schedule of rates for the period permitted by law and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter such rates had become effective in each such case pursuant to a separate bond field therein by plaintiff in error with the Commission and approved by it. The bond was conditioned for the repayment by plaintiff in error of the portion of such increased rates thereafter, upon final hearing, determined by the Commission to be unreasonable or excessive.

[fol. 778] In each such case plaintiff in error was proceeding to show separately the fair value of its property and its net income, and that the rates so made effective under bond were not unreasonable or excessive. On said 14th day of October, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's property used and useful in the furnishing of its service and of its rates and charges for such service, and consolidated with said company-wide investigation all of the then pending

separate cases, said company-wide investigation being numbered 3307 on the docket of the Commission.

After the commencement of said company-wide investigation plaintiff in error filed schedules of increased rates for certain classes of its service in other separate exchanges, some of which schedules, as in the case of said separate cases previously mentioned, were suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. On January 16, 1934, the date of the Commission's final order in said company-wide case, there were pending and undisposed of forty-five of such separate cases involving plaintiff in error's property and rates for its exchange services and one case involving plaintiff in error's property and rates for its toll service. The aggregate penalty of the bonds so given by plaintiff in error in said separate cases is $14,166,768. All of said bonds were duly approved by the Commission and are now in full force and effect.

Instead of hearing and determining said cases separately the Commission in its final orders of January 16 and March 1, 1934, has ordered the plaintiff in error to make refunds on account of claimed excessive net income arising out of and attributable to its entire intrastate operations in Ohio, but without having found or determined the fair value of plaintiff in error's property, its revenues or expenses, or its net income in respect of the separate exchanges and the toll system wherein such rates were made effective under bond as above stated.

[fol. 779] D

On the 10th day of January, 1931, the Commission entered a tentative finding and order in said company-wide case in which it found the fair value of plaintiff in error's said property as a whole as of June 30, 1925, to be the sum of $104,282,735, copies of which said finding and order are attached hereto, marked respectively Exhibits A and B and made parts hereof.

Protest against such tentative finding and order was filed by plaintiff in error within thirty days after the entry thereof, a copy of which said protest is hereto attached, marked Exhibit C and made a part hereof, and thereafter the Commission received additional evidence of the fair

value of plaintiff in error's property, its revenues, expenses and net income as a whole.

On the 16th day of January, 1934, the Commission made the findings and entered the final order in said company-wide case heretofore referred to and on the 19th day of January, 1934, served the same on plaintiff in error, copies of which said findings and order, marked respectively Exhibits D and E, are hereto attached and made parts hereof.

On the 6th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its protest and application and petition for a rehearing in said company-wide cause No. 3307, a copy of which said protest and application and petition for rehearing is hereto attached, marked Exhibit F and made a part hereof.

On the 17th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its application and request (1) that the Commission modify said findings and order by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates thereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit [fol. 780] plaintiff in error in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the said separate causes where plaintiff in error was and is collecting rates pursuant to bond as provided in said Robinson and Pence laws, and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error never had access.

A copy of said application and request is hereto attached, marked Exhibit G and made a part hereof.

On the 1st day of March, 1934, the Commission, by its order of that date, overruled and denied said protest and

application and petition for rehearing (heretofore identified as Exhibit F) and on the same day and in the same entry denied and overruled said application and request (heretofore identified as Exhibit G).

A copy of said order of March 1st, 1934, denying said protest and application and petition for rehearing and said application and request, marked Exhibit H, is hereto attached and made a part hereof. Said entry of March 1st, 1934, purports to correct "as of and for the 16th day of January, 1934, nunc pro tunc" the original final order entered by the Commission on January 16, 1934, (heretofore identified as Exhibit E). On the 9th day of March, 1934, plaintiff in error filed its application and petition for a rehearing of this cause, a copy of which is hereto attached, marked Exhibit I and made a part hereof, and on the same day the Commission denied the same.

[fol. 781] E

The said findings and orders of January 16 and March 1st, 1934, and each and both of them, are unlawful and unreasonable in that the Commission, in ascertaining and finding the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, committed and made substantial and prejudicial errors in the following respects and for the following reasons, and each of them, for which said errors, said findings and orders should be vacated, reversed and set aside:

1. The Commission erred in taking into consideration and basing its said findings and orders upon alleged material and labor cost prices and trends, obtained from various sources without plaintiff in error's knowledge, which were not offered or introduced in evidence and as to which plaintiff in error had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of plaintiff in error's property as of June 30, 1925, thereupon determined from the information above referred to and from price trends of Western Electric Company, erroneously compiled and applied as shown in specification of error number 5 infra, composite trend percentages to plaintiff in error's entire intrastate property, exclusive of right of way and working capital, which trend percentages, commencing with June 30, 1925, and expressing the cost level of each succeeding year as a percentage of the cost level of each preceding year, respectively, were as follows:

[fol. 782]

1926	98.73 per cent
1927	96.97 per cent
1928	99.20 per cent
1929	101.45 per cent
1930	95.65 per cent
1931	93.95 per cent
1932	88.71 per cent
1933	102.96 per cent

The alleged facts so considered did not come from any official sources which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and the plaintiff in error had no opportunity to examine or to explain or rebut the same, or to show that such claimed price trends could not fairly be considsidered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied the plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to information not introduced in any hearing.

In the application and request filed by plaintiff in error with the Commission on the 17th day of February, 1934, the Commission was specifically requested.

"to afford the respondent an opportunity to examine and analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of

January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access."

The Commission in said entry of March 1st, 1934, after arguments and a full hearing on said request made by the plaintiff in error, denied the same in said order of March 1, 1934. The fair value of plaintiff in error's intrastate property has thus been fixed and determined to its prejudice upon information and claimed proof which it had no opportunity to examine, analyze, explain or rebut, and plaintiff in error has accordingly been denied a fair trial and [fol. 783] hearing by the Commission. The findings and orders of the Commission based upon such claimed proof deprive the plaintiff in error of its property without due process of law and deny to the plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The plaintiff in error was denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the order to refund made in this cause, based upon the Commission's said findings of fair value, because of the following facts:

(a) In forty-five separate exchanges in the State of Ohio and for its toll service the plaintiff in error put rates into effect under the Robinson law or the Pence law pursuant to bonds duly filed by it with and approved by the Commission;

(b) The plaintiff in error was proceeding to show the fair value of its property, its revenues, expenses and net income in respect of each such separate exchange and in respect of its toll system in order to establish that the rates so put into effect were just and reasonable, when the Commission on its own motion, in October, 1924, consolidated such Robinson and Pence law cases and instituted its own state-wide investigation of the fair value of plaintiff in error's property and its rates and charges. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested

in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved to offer such other and further competent evidence as to them shall seem fit";

(c) The plaintiff in error repeatedly urged during the progress of the hearings before the Commission that it had the right to submit to the Commission evidence showing [fol. 784] separately for each year the fair value of its property employed in its intrastate service with respect to each such separate exchange and its intrastate toll system where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and demanded repeatedly the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove its revenues, expenses and net income and to show that the rates so made effective were no more than just and reasonable;

(d) The Commission definitely refused to permit such a showing to be made by the plaintiff in error and refused to permit the introduction of evidence of the kind offered by the plaintiff in error with respect to the fair value of the plaintiff in error's property in each such separate exchange and in its toll system and has refused plaintiff in error a hearing in respect thereof. In the application and request filed by the plaintiff in error with the Commission on the 17th day of February, 1934, the Commission was specifically requested

"to permit the respondent, in accordance with the request heretofore made by it herein and hereby renewed by it, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the separate cases wherein the respondent is collecting rates pursuant to bond as provided in the so-called Robinson law and the so-called Pence law, as the same appear in 108 Ohio Laws at page 1094 and 110 Ohio Laws at page 366, respectively."

The Commission in said entry of March 1st, 1934, after full hearing and argument, denied the above request made by the plaintiff in error and as a result this cause has been heard and determined and the fair value of plaintiff in error's intrastate property fixed without giving plaintiff

in error an opportunity for a hearing with respect to the fair value of its property in each such separate exchange and in its toll system.

[fol. 785] 3. The said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that in said order of January 16, 1934, the Commission found:

(a) That the fair value of plaintiff in error's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

Based upon such findings of value so made the Commission ordered the plaintiff in error to refund to its subscribers and patrons the sum of $13,289,172, with interest thereon and ordered plaintiff in error to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until further order of the Commission.

Said findings and orders of the Commission above set out are unlawful and unreasonable and are arbitrary, invalid and confiscatory of plaintiff in error's property in that the fair value of the plaintiff in error's said intrastate property in each of said years was largely in excess of the amounts so found by the Commission therefor, all as more particularly shown in the succeeding specification of error.

4. The Commission erred in finding that the fair value of plaintiff in error's intrastate property used and useful in the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

[fol. 786]

Date	Value Found
June 30, 1925	$ 93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of plaintiff in error's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

5. The Commission erred in arriving at the fair value of the plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied these price trends to all plant items purchased from Western Electric and included in the plaintiff in error's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to the plaintiff in error. The telephone apparatus included in the plaintiff in error's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by use of such Western Electric prices for telephone apparatus, obtained an alleged trend therefor, and then erroneously applied such trend, not only to the telephone apparatus in the plaintiff in error's property, but also to its lead covered [fol. 787] cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of the plaintiff in error's property

and its finding in this respect is arbitrary, unlawful and unreasonable.

6. The evidence showed that the prices charged by Western Electric Company to the plaintiff in error for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of Western Electric Company in its Bell business and in its business with the plaintiff in error were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including plaintiff in error.

The appraisal introduced in evidence by plaintiff in error as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by plaintiff in error. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also included plaintiff in error's real estate at its market value and plaintiff in error's buildings at their fair value.

All subsequent additions to plaintiff in error's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by plaintiff in error therefor.

The Commission erred in applying to the reproduction cost estimate so arrived at price trends of labor and material costs based upon the alleged experience of manufacturers other than Western Electric Company and upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

[fol. 788] 7. The Commission, in fixing the fair value of plaintiff in error's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Elec-

tric Company in November, 1930, under the following circumstances:

The evidence shows that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase cannot be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

8. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

9. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for the years [fol. 789] 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

The actual cost of plaintiff in error's intrastate property, including cash working capital and materials and supplies as allowed by the Commission in said orders, were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

10. The Commission erred in overruling the plaintiff in error's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and in failing in said order of January 16, 1934, to increase said value in the respects set forth in plaintiff in error's protest.

11. The Commission erred in its orders of January 16 and March 1, 1934, in reducing without any change in the pertinent evidence, the value of plaintiff in error's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value:

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

(d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

[fol. 790] The value tentatively determined by the Commission for the plaintiff in error's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred by reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years. In each of the foregoing respects the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

12. The Commission erred in its findings and orders by failing to give any consideration to or including any allowance for the going concern value of plaintiff in error's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of plaintiff in error's property and found that the element of going value amounted to $3,592,040, which amount was too low according to the undisputed evidence. In said order it made an allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business, in operation and earning money, and the "bare bones" of the physical plant. In its final finding of fair value and in its orders fixing the same the Commission not only eliminated any allowance for going value, but reduced the fair value as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16 and March 1, 1934, no allowance whatever has been made for going concern value in any of the years, either as a separate element or otherwise in the valuation of plaintiff in error's intrastate property. The plaintiff in error was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived plaintiff in error of [fol. 791] its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

13. The Commission erred in arriving at the fair value of the plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by the plaintiff in error during such respective years in telephone property in proces of construction, viz.:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501

1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

The plaintiff in error was entitled to have included in the fair value of its intrastate property as found by the Commission the above amounts for each of the above years, because the sums so invested by it in property in process of construction, being devoted to the public service, the plaintiff in error was entitled to earn a return upon such property. The Commission's failure to include such amounts deprived plaintiff in error of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

14. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property in disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant; right of way, buildings, and also material values in switchboards installed by Western Electric Company, in other equip-[fol. 792] ment of central offices, private branch exchanges, interior block wires, exchange aerial wire and toll aerial wire.

15. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property, in limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and in excluding the following items of plant from the amount upon which the allowance for omissions was computed; right of way, building and general equipment.

16. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property, in allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error as shown by the evidence.

17. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of the plaintiff in error found by the Commission for each of the years 1925 to 1933, inclusive.

18. The Commission erred in finding that the actual existing depreciation in the plaintiff in error's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its orders of January 16 and March 1, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted from its own finding of fair value a sum on account of the existing depreciation in the plaintiff in error's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 793] 19. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein, as shown by the evidence.

20. The reproduction cost new of the property of plaintiff in error used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to-wit:

Account No.	
207	Right of Way.
211	Land.
212	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange pole lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.

Account No.	
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.
255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital, Including Supplies.
	Construction Work in Progress.

21. The fair value of the property of said plaintiff in error used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of [fol. 794] January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and, specifically, as to each and all classes of such property.

22. The Commission erred in undervaluing the intrastate property of the plaintiff in error, for each of said years, respectively, contrary to the law and the evidence.

23. In each and all of the foregoing respects complained of the Commission erred in denying plaintiff in error's protests and applications for a rehearing of said cause and in failing to grant such rehearing.

24. In each and all of the foregoing respects complained of the said findings, proceedings, acts and orders of the Commission affect materially the substantial rights of plaintiff in error; are erroneous and prejudicial to it, and are unlawful, unreasonable, unjust, and are contrary to and not sustained by sufficient evidence, and are against the weight of the evidence and are in violation of the applicable Ohio Statutes, and of Article 1, Section 1 of the Constitution of the State of Ohio; and confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and will deprive plaintiff in error of its property without due process of law and deny plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for rehearing filed by it in said cause number 3307 on the docket of the Commission.

Wherefore, plaintiff in error prays that the said findings and orders of the defendant in error, The Public Utilities Commission of Ohio, made and entered in said Cause No. 3307 on the docket of said Commission on the 16th day of January and March 1st, 1934, in so far as the same ascertains and finds the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, be reversed, vacated and set aside by this Court, as [fol. 795] unlawful and unreasonable, and that plaintiff in error may be restored to all things which it has lost by reason of the aforesaid findings and orders of said defendant in error.

The Ohio Bell Telephone Company, by Randolph Eide, Its President. Karl E. Burr, W. H. Thompson, W. B. Stewart, Its Attorneys. Ashley M. Van Duzer, Of Counsel.

Duly sworn to by Randolph Eide. Jurat omitted in Printing.

[fol. 796] IN SUPREME COURT OF OHIO

No. 24695

[Title omitted]

PRÆCIPE FOR SUMMONS IN ERROR

To the Clerk:

Issue summons in error in this cause for Public Utilities Commission of Ohio, Columbus, Ohio, defendant in error, directed to the Sheriff of Franklin County, Ohio, returnable according to law.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Attorneys for Plaintiff in Error.

[fol. 797] **Appendices A, B, C, D, E, F, G, H, I, to Petition in Error**

[fol. 798] A—Tentative Finding of January 10, 1931.
B—Order of January 10, 1931 fixing value.
C—Protests of The Ohio Bell Telephone Company to value fixed in order of January 10, 1931.
D—Findings of January 16, 1934.
E—Order of January 16, 1934.
F—Application for rehearing of January 16, 1934 order.
G—Application and Request of The Ohio Bell Telephone Company of February 17, 1934.
H—Order of March 1, 1934.
I—Application for rehearing of March 1, 1934 order.

* * * * * * *

[fols. 799-800] [File endorsement omitted]

[fol. 801] IN SUPREME COURT OF OHIO

No. 24694

[Title omitted]

PETITION IN ERROR OF THE OHIO BELL TELEPHONE COMPANY TO REVIEW THE FINDINGS AND FINAL ORDERS OF THE PUBLIC UTILITIES COMMISSION OF OHIO OF JANUARY 16, AND MARCH 1, 1934, IN CAUSE NO. 3307 ON THE DOCKET OF SAID COMMISSION.—Filed March 14, 1934.

A

The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of September, 1921, a corporation duly organized under the laws of Ohio, with its principal office in the City of Cleveland, Ohio.

Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers stations, and of toll lines connecting said several exchanges, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in

said state telephonic messages, and has been and now is a public utility within the meaning of the General Code of Ohio.

[fol. 802] The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the "Commission," is now and has has been continuously since 1913 an administrative body created by the laws of the State of Ohio, with its office in the City of Columbus in said State, and has been during all of said time and is vested with the powers granted it by the laws of said state.

B

This proceeding in error is brought to obtain a reversal and vacation, for the reasons and upon the grounds hereinafter stated, of the findings and final order of the Commission made and entered on the 16th day of January, 1934, in the cause hereinafter referred to, and an order of the Commission dated March 1st, 1934, purporting to correct said order of January 16, 1934. By said orders, the Commission ordered and directed plaintiff in error, first, to refund to its subscribers and patrons a portion of the rates collected by plaintiff in error for its intrastate telephone service in the State of Ohio during the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172, with interest, and, second, ordered and directed plaintiff in error to file with the Commission a schedule of reduced rates for its intrastate telephone service in the State of Ohio effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission.

Plaintiff in error's rates throughout said period were and are of two kinds:

(a) Those filed with the Commission for separate exchanges and for its toll system, and, following the statutory protest and suspension, made the subject of a separate case in each instance and put into effect under separate bond approved by the Commission, all as hereinafter set forth.

(b) Those filed with the Commission and made effective without protest, suspension, bond or other condition.

[fol. 803] C

Prior to the 14th day of October, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant

to the provisions of the Robinson and Pence laws, respectively (108 Ohio Laws 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for certain parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest and the separate schedule so protested had been made the subject of a separate case on the docket of the Commission, under an appropriate caption and number. In each such separate case the Commission, following such protest, had suspended the effective date of the schedule of rates for the period permitted by law and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter such rates had become effective in each such case pursuant to a separate bond filed therein by plaintiff in error with the Commission and approved by it. The bond was conditioned for the repayment by plaintiff in error of the portion of such increased rates thereafter, upon final hearing, determined by the Commission to be unreasonable or excessive.

In each such case plaintiff in error was proceeding to show separately the fair value of its property and its net income, and that the rates so made effective under bond were not unreasonable or excessive. On said 14th day of October, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's property used and useful in the furnishing of its service and of its rates and charges for such service, and consolidated with said company-wide investigation all of the then pending separate cases, said company-wide investigation being numbered 3307 on the docket of the Commission.

[fol. 804] After the commencement of said company-wide investigation plaintiff in error filed schedules of increased rates for certain classes of its service in other separate exchanges, some of which schedules, as in the case of said separate cases previously mentioned, were suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. On January 16 and March 1, 1934, there were pending and

undisposed of forty-five of such separate cases involving plaintiff in error's rates for its exchange services and one case involving its rates for its toll service. Plaintiff in error has filed with the Commission in such separate cases separate bonds in the aggregate penal sum of $14,166,768, all of which have been approved by the Commission and are now in full force and effect.

Instead of hearing and determining said cases separately the Commission in its final orders of January 16 and March 1, 1934, has ordered the plaintiff in error to make refunds on account of claimed excessive net income arising out of and attributable to its entire intrastate operations in Ohio, but without having found or determined the fair value of plaintiff in error's property, its revenues or expenses, or its net income, in respect of the separate exchanges and the toll system wherein such rates were made effective under bond as above stated.

D

On the 10th day of January, 1931, the Commission entered a tentative finding and order in said company-wide case in which it found the fair value of plaintiff in error's said property as a whole as of June 30, 1925, to be the sum of $104,282,735, copies of which said finding and order are attached hereto, marked respectively Exhibits A and B and made parts hereof.

Protest against such tentative finding and order was filed by plaintiff in error within thirty days after the entry thereof, a copy of which said protest is hereto attached, marked Exhibit C and made a part hereof, and thereafter the Commission received additional evidence of the fair value of plaintiff in error's property, its revenues, expenses and net income as a whole.

[fol. 805] On the 16th day of January, 1934, the Commission made the findings and entered the final order in said company-wide case, heretofore referred to, and on the 19th day of January, 1934, served the same on plaintiff in error, copies of which said findings and order, marked respectively Exhibits D and E are hereto attached and made parts hereof.

On the 6th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its protest and application and petition for a rehear-

ing in said company-wide cause No. 3307, a copy of which said protest and application and petition for rehearing is hereto attached, marked Exhibit F and made a part hereof.

On the 17th day of February, 1934, prior to the effective date of said order, plaintiff in error filed with the Commission its application and request (1) that the Commission modify said findings and order by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates thereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of the said separate causes where plaintiff in error was and is collecting rates pursuant to bond as provided in said Robinson and Pence laws, and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error never had access.

A copy of said application and request is hereto attached, marked Exhibit G and made a part hereof.

[fol. 806] On the 1st day of March, 1934, the Commission, by its order of that date, overruled and denied said protest and application and petition for rehearing (heretofore identified as Exhibit F) and on the same day and in the same entry denied and overruled said application and request (heretofore identified as Exhibit G).

A copy of said order of March 1st, 1934, marked Exhibit H, is hereto attached and made a part hereof. Said entry of March 1st, 1934, purports to correct "as of and for the 16th day of January, 1934, nunc pro tunc" the original final order entered by the Commission on January 16, 1934 (heretofore identified as Exhibit E).

On the 9th day of March, 1934, plaintiff in error filed its application and petition for a rehearing of this cause, a copy of which is hereto attached, marked Exhibit I and

made a part hereof, and on the same day, the Commission denied the same.

E

The said findings and orders of January 16 and March 1, 1934, and each and both of them, are unlawful and unreasonable in that the Commission in said findings and orders committed and made substantial and prejudicial errors in the following respects and for the following reasons, and each of them, for which said errors said findings and orders should be vacated, reversed and set aside:

1. The Commission erred in taking into consideration and basing its said findings and orders upon alleged material and labor cost prices and trends, obtained from various sources without plaintiff in error's knowledge, which were not offered or introduced in evidence and as to which plaintiff in error had no opportunity to cross examine, explain or rebut, as follows:

(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

[fol. 807] (b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

(c) Building cost trends taken from the Engineering News Record;

(d) Labor cost trends from the same publication;

(e) Other labor and material cost trends obtained from various undisclosed sources.

The Commission having fixed the alleged fair value of plaintiff in error's property as of June 30, 1925, thereupon determined from the information above referred to and from price trends of Western Electric Company erroneously applied as shown in specification of error number 14, infra, composite trend percentages to plaintiff in error's entire intrastate property, exclusive of right of way and working capital, which trend percentages commencing with June 30, 1925, and expressing the cost level of each succeeding year as a percentage of the cost level of each preceding year, respectively, were as follows:

1926	98.73 per cent
1927	96.97 per cent
1928	99.20 per cent
1929	101.45 per cent
1930	95.65 per cent
1931	93.95 per cent
1932	88.71 per cent
1933	102.96 per cent

The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and the plaintiff in error had no opportunity to examine or to cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied the plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not intro-
[fol. 808] duced in any hearing. In the application and request filed by plaintiff in error with the Commission on the 17th day of February, 1934, the Commission was specifically requested

"to afford the respondent an opportunity to examine and analyze, explain and rebut the information considered by this Commission in arriving at said findings and order of January 16, 1934, referred to at page 26 of said findings, which information was at no time exhibited to this respondent or introduced in any open hearing or made a part of the record in this case and to which information the respondent has never had access."

The Commission after argument and a full hearing on said request made by the plaintiff in error, denied the same in said order of March 1st, 1934. The fair value of plaintiff in error's property has thus been fixed and determined upon information and claimed proof which the plaintiff in error had no opportunity to examine, cross examine, analyze, explain or rebut and plaintiff in error has accordingly been denied a fair trial and hearing by the Commission. The findings and orders of the Commission based upon such

claimed proof deprive the plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

2. The Commission erred in said findings and orders in requiring the plaintiff in error to file, effective retroactively as of June 30, 1925, and thereafter until changed by the order of the Commission, such schedules of reduced rates for plaintiff in error's intrastate service as should produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date. Said orders in this respect, if enforced, will deprive the plaintiff in error of its property without due process of law and deny to the plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that:

[fol. 809] (a) The action of the Commission is an attempt to accomplish indirectly that which it can not directly do, viz.: to deprive plaintiff in error of the opportunity to earn a fair return upon the fair value of its property by reducing plaintiff in error's present rates, although they are now producing, as the Commission finds in said orders, no more than a fair return on the value of said property as found by the Commission.

(b) In said findings and orders the Commission found that for the year 1933 plaintiff in error was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that plaintiff in error's net income from said property for that year at its present rates did not exceed such a return. Any reduction in the plaintiff in error's present rates will necessarily reduce its net income below the amount found by the Commission to be fair, and will be unjust and unreasonable.

Said findings and orders are also invalid and void because under the applicable Ohio statutes the Commission has no authority to require plaintiff in error to file schedules of rates which shall become effective retroactively.

3. The Commission erred in its said findings and orders in failing to fix and determine the present existing rates of the plaintiff in error as the just and lawful rates to be

charged, received and collected by the plaintiff in error for the present and the future. In the application and request filed by the plaintiff in error with said Commission on the 17th day of February, 1934, the plaintiff in error requested the Commission

"to modify its findings and order entered in this cause on the 16th day of January, 1934, by finding, deciding and ordering that the rates now charged by the respondent for its services rendered in the State of Ohio are just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by the respondent for its services until they are modified in accordance with law."

which application and request the Commission denied in its entry of March 1st, 1934, after a full hearing and argument.

[fol. 810] The company-wide investigation in Cause No. 3307 could have had no lawful purpose other than to fix the future rates of the plaintiff in error. The Commission, notwithstanding its finding that the plaintiff in error was earning only a barely compensatory return for the year 1933, by the device of establishing rates retroactively effective has entered an order requiring a present reduction of rates, with the result that said order if enforced will deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The action of the Commission in this respect is in direct violation of the laws of the State of Ohio from which its authority is granted, as under such laws the Commission has no authority to fix rates except for the future.

4. As heretofore shown, plaintiff in error's rates throughout the period in controversy in said cause were of two kinds:

(a) those filed with the Commission and following the statutory protest and suspension, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence laws;

(b) those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

The Commission having fixed the value of the plaintiff in error's property, its revenues and expenses and net income for each of the years in controversy and the net income which the plaintiff in error was entitled to earn under what the Commission found to be fair rates of return for each of the years, thereupon ordered the plaintiff in error to refund to its subscribers and patrons the entire difference between its net income so found for the intrastate property and the net income which the Commission found it should have earned thereon at fair rates of return during each of the years, without distinction as between rates collected [fol. 811] pursuant to bond as hereinabove in subdivision (a) described, and rates not collected pursuant to bond, as hereinabove in subdivision (b) described.

The Commission had no authority under any circumstances to require plaintiff in error to make refunds except with respect to rates collected pursuant to bonds filed by plaintiff in error with this Commission and approved by it under the Robinson and Pence laws.

In only forty-five exchanges in the State of Ohio, out of a present total of 162 exchanges, have rates been put into effect pursuant to bonds, and in many of such forty-five exchanges only a part of the entire rate schedules have been so made effective. The said orders of the Commission fail to state, and there is no possible way of determining from said findings or orders, how much of the refunds ordered to be made in any year is applicable to rates made effective in plaintiff in error's exchanges in the State of Ohio or with respect to its intrastate toll rates pursuant to bonds filed as aforesaid.

The entire order for refund is therefore arbitrary, without any support in the evidence and void.

5. The plaintiff in error was denied the equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the order of refund made in this cause because of the following facts:

(a) As heretofore shown, prior to the 14th day of October, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the said Robinson and Pence laws, a number of separate schedules of increased rates for its service in separate exchanges and

a schedule of increased rates for its toll service and, following protest against and suspension of such schedules, the same had been made effective pursuant to bond duly filed by plaintiff in error with and approved by the Commission.

(b) In each instance such schedule had been made the subject of a separate case on the docket of the Commission and in each such case plaintiff in error was proceeding to show the fair value of its property and its revenues and [fol. 812] expenses and net income, and that the rates so made effective pursuant to bond were just and reasonable, when the Commission, on its own motion on the said 14th day of October, 1924, instituted its own company wide investigation of plaintiff in error's rates and charges and consolidated in said investigation all of said pending separate cases. The order of the Commission inaugurating said company-wide investigation expressly reserved "the right to the parties interested in those cases wherein evidence has already been offered by any of the parties interested, upon the issues therein involved, to offer such other and further competent evidence as to them shall seem fit."

(c) The plaintiff in error repeatedly urged during the progress of the hearings before the Commission that it had the right to submit to the Commission evidence showing separately for each year the fair value of its property employed in its intrastate service, its revenues and expenses, net income and rates of return with respect to each such separate exchange, and its intrastate toll system, where rates had become effective pursuant to bonds filed in accordance with the provisions of the Robinson and Pence laws, and demanded repeatedly the right to make such a showing for each such exchange and for its intrastate toll property and the right to prove that the rates so made effective under bond were no more than just and reasonable. As stated in the Commission's findings of January 16, 1934, the plaintiff in error "has always insisted upon the right to present and has offered to present, separate testimony with respect to them," referring to the separate cases wherein rates have been collected pursuant to bonds as provided in the Robinson and Pence laws;

(d) The Commission definitely refused to permit such a showing to be made by the plaintiff in error and refused to permit the introduction of evidence of the kind offered

by the plaintiff in error with respect to the fair value of its property, its revenues, expenses, net income and rates of return in such separate exchanges and in its toll business and refused plaintiff in error a hearing in respect thereof.

The plaintiff in error had had no opportunity for a hearing and had no hearing with respect to the refunds which [fol. 813] have been ordered by the Commission, but on the contrary said refunds were ordered arbitrarily and without any hearing and without any evidence upon which they could be sustained.

6. The Commission erred in refusing to determine the amounts of refunds separately for each exchange and for plaintiff in error's intrastate toll system, hereinabove in specification 5 referred to, in direct violation of the applicable Ohio statutes which are the measure of the Commission's authority in that respect.

7. Under the law of Ohio no order for refunds could properly or legally be made by the Commission except upon a finding that rates fixed for a given class of plaintiff in error's exchange service, or for a given exchange, or for plaintiff in error's intrastate toll service, collected pursuant to bond, were unreasonable or excessive, and except upon a definite order by the Commission directing the refund of the excess portion of such rates in each such separate case. The Commission was required by the applicable statutes and under the terms of plaintiff in error's bonds executed in pursuance of such statutes to make a determination of the reasonableness or unreasonableness of the rates charged by plaintiff in error in each specific case where such rates had become effective pursuant to bond as aforesaid.

Therefore, the said orders of the Commission made in this case do not comply with the requirements of the Ohio law and are void.

8. The said orders of the Commission requiring the plaintiff in error to file a schedule of rates as of June 30, 1925, which shall produce to plaintiff in error net income not in excess of that found by the Commission in said order to be fair and reasonable as of June 30, 1925, deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws in violation of the

Fourteenth Amendment to the Constitution of the United States in that:

(a) The rates of plaintiff in error now and heretofore in effect, including such rates as have been increased under [fol. 814] the Robinson and Pence laws pursuant to bond filed with and approved by the Commission, are and at all times have been the duly and lawfully established rates which plaintiff in error is entitled to charge, collect and receive for its services. It is beyond the Commission's power retroactively to change, alter or amend any such rate or to require the filing of any new rate schedule for any of such services at any time prior to the effective date of a new order by the Commission or to order any refund to be made with respect to such rates, except as to rates effective pursuant to bonds.

(b) The rate schedules ordered to be filed give effect to the net income which the Commission found plaintiff in error to be entitled to earn for the year 1925, which net income is derived from all of the plaintiff in error's intrastate property in Ohio by means of which the public is being served in many exchange areas under rates not established pursuant to bond. The Commission has not made any separation of the amounts to be refunded as between rates collected by the plaintiff in error pursuant to bonds, on the one hand, and on the other hand, rates not collected under bond. There was no evidence before the Commission upon which any such separation could be made.

(c) The authority of the Commission, even in cases in which rates have been collected under bond, is limited to finding from the evidence the amount by which the rates so established are unreasonable or excessive and to ordering the repayment of such excessive amounts. It can only fix rates and require the filing of rate schedules which shall be prospectively operative.

9. The said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

(a) that the fair value of plaintiff in error's intrastate property used and useful in the service of the public in

Ohio was the following amounts as of the following dates respectively:

[fol. 815] June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

(b) that the net income of plaintiff in error from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

(c) that plaintiff in error's net income from said intrastate business equalled an annual earning upon the said value of plaintiff in error's intrastate property at the following rates for the following years:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

(d) that the reasonable annual rates of return which the plaintiff in error was entitled to earn upon said intrastate property were the following percentages for the following years:

[fol. 816] 1925 to 1929, inclusive 7 per cent per annum
1930 to 1931, inclusive ..... 6½ " " " "
1932 and 1933 ..... 5½ " " " "

(e) that plaintiff in error had collected during the period 1925 to 1932, inclusive, the sum of $13,289,172 in excess of a fair return upon the fair value of its intrastate property used and useful in the service of the public and that such excess had been collected in the following amounts in the following years:

1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,947
1930	1,481,699
1931	1,659,760
1932	908,335

Upon such findings so made the Commission ordered the plaintiff in error to refund to its subscribers and telephone users said sums of money above set out, aggregating the sum of $13,289,172, with interest thereon, and ordered plaintiff in error to file with the Commission a schedule of reduced rates effective retroactively as of June 30, 1925, and thereafter until the further order of the Commission.

The findings and orders of the Commission are arbitrary, unlawful, unreasonable, invalid and confiscatory of plaintiff in error's property in that the fair value of the plaintiff in error's said intrastate property in each of said years was largely in excess of the amounts so found by the Commission therefor; plaintiff in error's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by plaintiff in error were substantially lower than those which the Commission found the plaintiff in error had earned in each of said years, and the return to which plaintiff in error was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, all as more particularly shown in specifications of error, 10, 11, 12 and 13, infra.

[fol. 817] 10. The Commission erred in finding that the fair value of plaintiff in error's intrastate property used

and useful in the service of the public in the State of Ohio was the following amounts on the following dates, respectively:

Date	Value Found
June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,622
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

The Commission should have found that the minimum fair value of plaintiff in error's intrastate property used and useful in the service of the public in the State of Ohio as of each of said dates was at least $30,000,000 in excess of said values so found, respectively.

11. The Commission erred in finding that the net income of the plaintiff in error from its intrastate business in the State of Ohio available for a return upon its said intrastate property employed in such business was the following amounts for the following years:

1925	$8,382,171
1926	9,165,237
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

Under the evidence the Commission should have found that the plaintiff in error's net income from such business [fol. 818] available for a return upon such property, was not more than the following amounts in each of the following years:

1925	$5,956,673
1926	6,667,946
1927	7,202,3[illegible]

1928	8,205,623
1929	8,153,593
1930	8,017,157
1931	8,065,229
1932	7,038,876
1933	6,160,952

12. The Commission erred in finding that the plaintiff in error's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

1925	8.95 per cent
1926	9.01 " "
1927	8.79 " "
1928	8.57 " "
1929	8.09 " "
1930	7.52 " "
1931	7.64 " "
1932	6.18 " "
1933	5.51 " "

The rates of return so found by the Commission are higher than the rates of return actually earned by plaintiff in error upon such property, in that, as shown by the evidence, the Commission found, as shown in specification 10 hereof, the fair value of plaintiff in error's intrastate property in each of such years to be too low, and found the plaintiff in error's net income for each of such years to be substantially higher than it actually was, as shown in specification 11 hereof.

The Commission should have found, in accordance with the evidence, that the rates of return actually earned by plaintiff in error upon such property during each of said [fol. 819] years were subetantially less than the rates of return found by the Commission to be reasonable for said years respectively, as hereinafter in specification 13 set forth.

13. The Commission erred in finding that plaintiff in error was entitled to earn upon the fair value of its intra-

state property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ per cent per annum
1932 and 1933	5½ per cent per annum

The Commission should have found upon the evidence that the rates of return at which the plaintiff in error was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission have deprived plaintiff in error of its property without due process of law and have denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

14. The Commission erred in arriving at the fair value of the plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously giving effect to claimed price trends of Western Electric Company beginning with December 31st, 1920, in that it applied these price trends to all plant items purchased from Western Electric Company and included in the plaintiff in error's property for each of the years 1925 to 1933, inclusive, and gave weight to them on that basis.

The undisputed evidence showed that the prices applied by the Commission in determining such trends were those of Western Electric Company for telephone apparatus only, as distinguished from prices for lead covered cable and materials and supplies, sold by the Western Electric Company to the plaintiff in error. The telephone apparatus included in the plaintiff in error's property constitutes approximately one-half of the total Western Electric plant items in such property. The Commission, by the use of [fol. 820] such Western Electric prices for telephone apparatus, obtained an alleged trend therefor, and then erroneously applied such trend, not only to the telephone apparatus in the plaintiff in error's property, but also to its lead covered cable and materials and supplies. The action of the Commission in so doing resulted in substantially decreasing the fair value of the plaintiff in error's said property, and its finding in this respect is arbitrary, unlawful and unreasonable.

15. The evidence showed that the prices charged by Western Electric Company to the plaintiff in error for telephone apparatus, lead covered cable and materials and supplies were at all of the times involved in this cause substantially lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others. The evidence further disclosed that the earnings of Western Electric Company in its Bell business and in its business with the plaintiff in error were at all times reasonable and that Western Electric Company made no unfair or unreasonable profit out of its dealings with the Bell Associate Companies including plaintiff in error.

The appraisal introduced in evidence by plaintiff in error as of June 30, 1925, was based upon Western Electric prices then current for telephone apparatus, lead covered cable and materials and supplies and upon labor costs actually experienced by plaintiff in error. Such appraisal was not based upon general commodity prices, or upon general prices of manufactured articles or upon prices of other telephone manufacturers. Such appraisal also included plaintiff in error's real estate at its market value and plaintiff in error's buildings at their fair value.

All subsequent additions to plaintiff in error's property included items of plant purchased from Western Electric Company at their current cost, and other items of plant at labor and material prices actually paid by plaintiff in error therefor.

[fol. 821] The Commission erred in determining the fair value of said property by applying price trends of labor and material costs based upon the alleged experience of manufacturers other than Western Electric Company and upon other labor and material costs not current in or applicable to the telephone industry in Ohio.

16. The Commission, in fixing the fair value of plaintiff in error's intrastate property used and useful in the service of the public in Ohio, erroneously refused to give effect to an increase of approximately ten per cent in the prices of telephone apparatus made by the Western Electric Com-

pary in November, 1930, under the following circumstances:

The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable, and resulted in a substantial undervaluation of [fol. 822] plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

17. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the cost to reproduce new such property in each of such years.

18. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

The actual cost of plaintiff in error's intrastate property, including cash working capital and materials and supplies as allowed by the Commission in said orders, were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
December 31, 1928	136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

19. The Commission erred in finding that plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected from the subscribers and patrons of its intrastate service within the State of Ohio, the sum of $13,289,172, in excess of a fair return upon the fair value of its property actually used and useful in the service of the public in Ohio and in finding and deciding that such excess earnings had been collected in the following amounts in the following years, to-wit:

[fol. 823]

Date	Amount
1925	$1,822,647
1926	2,041,483
1927	1,986,610
1928	1,925,301
1929	1,463,347
1930	1,481,689
1931	1,659,760
1932	908,335

There was no evidence in the case which justified any finding by the Commission that any refund should be made with respect to any of the years in question and no basis upon which the Commission's order for such refund can be sustained.

20. The Commission's findings and orders that plaintiff in error refund to the subscribers and patrons of its intrastate service within the State of Ohio the sums specifically set forth in the last preceding specification of error are illegal and void and are not based upon any evidence in the record.

21. The Commission erred in overruling the plaintiff in error's protest against the value of its property tentatively found and determined by the Commission as of June 30, 1925, and in failing in said orders of January 16 and March 1, 1934, to increase said value in the respects set forth in plaintiff in error's protest.

22. The Commission erred in its orders of January 16 and March 1, 1934, in reducing, without any change in the pertinent evidence, the value of plaintiff in error's property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

(a) By deducting the sum of $325,247 from the allowance for right of way;

(b) By eliminating the sum of $3,592,040 on account of going concern value;

(c) By reducing the allowance for working capital including materials and supplies, by the sum of $551,498;

[fol. 824] (d) By excluding and deducting the sum of $3,391,674 from the amount of the undistributed construction expenditures.

The value tentatively determined by the Commission for the plaintiff in error's property as of June 30, 1925, was too low and was unjust and unreasonable. In addition, the Commission erred by reducing such tentative value by the sums above set forth and by giving effect to the foregoing reductions for each of the succeeding years.

In each of the foregoing respects the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

23. The Commission erred in said findings and orders by failing to give any consideration to or including any allowance for the going concern value of plaintiff in error's intrastate property in any of the years 1925 to 1933, inclusive. In its order of January 10, 1931, the Commission fixed the tentative value of plaintiff in error's property and found that the element of going value amounted to $3,592,040, which amount was too low, according to the undisputed evidence. In said order it made an allowance therefor sep-

arately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value and in its orders fixing the same, the Commission not only eliminated any allowance for going value, but reduced the fair value of plaintiff in error's intrastate property as tentatively fixed by it in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, and March 1, 1934, no allowance whatever has been made for going concern value in any of the years, either as a separate element or otherwise in the [fol. 825] valuation of plaintiff in error's said intrastate property. The plaintiff in error was entitled to have this element of value included in the fair value found by the Commission for each of the years and the refusal of the Commission to do so has deprived plaintiff in error of its property without due process of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

24. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by excluding from such valuation the following amounts of money invested by plaintiff in error during such respective years in telephone property in process of construction, viz.:

1925	$2,161,109
1926	4,168,837
1927	3,658,921
1928	2,059,240
1929	2,992,501
1930	4,750,748
1931	4,874,625
1932	810,383
1933	2,606,456

Plaintiff in error was entitled to have included in the fair value of its intrastate property the above amounts for each of the above years, because the sums so invested by it in property in process of construction, being devoted to the public service, plaintiff in error was entitled to earn a return

upon such property. The Commission's failure to include such amounts deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

25. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property in disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect of the following items of plant: right [fol. 826] of way, buildings, and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

26. The Commission erred in arriving at the fair value of plaintiff in error's said intrastate property, by limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

27. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property, by allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error, as shown by the evidence.

28. The Commission's allowance for the item of plant supervision and tool expense was inadequate in respect of the fair value of the intrastate property of the plaintiff in error found by the Commission for each of the years 1925 to 1933, inclusive.

29. The Commission erred in finding that the actual existing depreciation in the plaintiff in error's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its order of January 16, and March 1, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus er-

roneously deducted from its own finding of fair value a sum on account of the existing depreciation in the plaintiff in error's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny [fol. 827] to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

30. For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's said intrastate property, by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

31. The Commission erroneously disallowed and refused to include in plaintiff in error's reasonable and necessary operating expenses the following sums of money respectively, for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the said intrastate portion of plaintiff in error's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

In do doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

32. The Commission erroneously refused to permit a deduction from plaintiff in error's gross income of the following sums of money for each of the years 1925 to 1932, in-

clusive, representing the annual expense of amortization of the intrastate portion of plaintiff in error's landed capital:

[fol. 828]

1925	$57,506
1926	58,976
1927	58,536
1928	60,471
1929	47,347
1930	51,776
1931	50,339
1932	47,862

33. The Commission erred in allowing in plaintiff in error's said operating expenses for each of the years 1925 to 1933 annual expense of depreciation at the rate of only four per cent per annum of plaintiff in error's depreciable intrastate property. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation and amortization of landed capital in respect of plaintiff in error's intrastate property:

1925	$4,972,486
1926	5,430,897
1927	5,873,740
1928	6,518,073
1929	7,531,380
1930	8,299,250
1931	8,600,016
1932	6,940,848
1933	6,269,772

34. Plaintiff in error's evidence of its annual depreciation and amortization expense was based upon the service life and salvage of the several classes of plaintiff in error's depreciable and amortizable property. This evidence was undisputed. The Commission erred in ignoring such evidence and in arbitrarily fixing the rate of four per cent per annum for each of the years 1925 to 1933, inclusive, for plaintiff in error's said depreciation expense. In so doing, it substantially adopted the retirement theory of depreciation accounting and disregarded its own rules for computing the depreciation expense, which require the straight line method of depreciation accounting in accordance with [fol. 829] the Uniform System of Accounts, prescribed by

the Interstate Commerce Commission, pursuant to Section 20 (1) of the Interstate Commerce Commission Act, and approved by the Public Utilities Commission of Ohio, pursuant to Section 499-14 of the General Code. The Commission also erred in disallowing entirely the company's expense of amortization of landed capital. The action of the Commission in so disallowing plaintiff in error's expense of amortization and in reducing its expense of depreciation to four per cent per annum deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

35. The amounts determined in said findings and orders as representing the proper annual expense of depreciation are not only too low by reason of the fact that such percentages so applied in each year are too low, but also because such percentages have been applied to alleged property values which are in themselves too low.

36. The Commission erroneously refused to permit the deduction from plaintiff in error's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by plaintiff in error to the American Telephone and Telegraph Company on account of license contract services rendered by said company to plaintiff in error, viz:

1925	$732,429
1926	682,004
1927	741,006
1928	320,448
1929	175,773
1930	100,906
1931	94,350
1932	23,302

Said sums of money were paid by the plaintiff in error to said American Telephone & Telegraph Company for serv-
[fol. 830] ices actually rendered by the latter to plaintiff in error which services were required by plaintiff in error in the rendition of its intrastate service in the State of Ohio.

The Commission's refusal to allow plaintiff in error to make such deductions from its gross income or to treat such payments as an operating expense for each of such

years deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

37. The Commission erred in failing to make adjustments in plaintiff in error's expenses by way of increases in its Federal Income Tax because of the disallowances shown in specifications 31, 32 and 36, supra.

38. The reproduction cost new of the property of plaintiff in error used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, is less than the actual, true and correct reproduction cost new thereof and is therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of the following classes of property, to-wit:

Account No.	
207	Right of Way.
211	Land.
212	Other Equipment of Central Offices.
232	Station Installations.
241	Exchange Pole Lines.
242	Exchange Aerial Cable.
243	Exchange Aerial Wire.
244	Exchange Underground Conduit.
245	Exchange Underground Cable.
251	Toll Pole Lines.
252	Toll Aerial Cable.
253	Toll Aerial Wire.
254	Toll Underground Conduit.

[fol. 831]

255	Toll Underground Cable.
	Undistributed Construction Costs and Expenditures.
	Going Concern Value.
	Working Capital, Including Supplies.
	Construction Work in Progress.

39. The fair value of plaintiff in error's property used and useful in the service and convenience of the public as of June 30, 1925, as tentatively found and determined by

the Commission in said findings and order of January 10, 1931, is less than the actual fair value thereof and is therefore unjust, unreasonable and too low with respect to such property as a whole and, specifically, as to each and all classes of such property.

40. The Commission erred in undervaluing the said intrastate property of the plaintiff in error, in increasing its revenues, decreasing its expenses and increasing its net income for each of said years, respectively, contrary to the law and the evidence.

41. The Commission erred in said order of March 1, 1934, effective nunc pro tunc as of January 16, 1934, in ordering that plaintiff in error, within ninety days from the date of the service of a copy of said order, prepare and file with the Commission new schedules prescribing rates, charges, tolls, rentals, for all classes of intrastate service furnished in the State of Ohio, giving first consideration to a proper reduction of increased rates charged in the several exchanges in the state and for intrastate toll service collected under bond, which shall produce to plaintiff in error net income not in excess of that therein found to be fair and reasonable as of June 30, 1925.

42. The Commission erred in said order of March 1, 1934, in ordering plaintiff in error at the time of filing the aforementioned schedules to report to the Commission the amounts collected by plaintiff in error under bond from each exchange and for intrastate toll service, in excess of the amount that would have been collected had no increase been so charged, for each year from the effective date of said several increases, showing the particular service for which [fol. 832] a schedule went into effect providing for an increased rate; and also showing the amount collected under bond from each increased charge for such service over the amount that would have been collected had no increase been made, and at the same time statements showing in detail for each exchange and for intrastate toll service for each year from 1925 to 1932, both inclusive, (a) the revenue produced by the rates and charges collected by plaintiff in error; (b) the revenue that would have been produced by the rates and charges as set forth in the schedules therein ordered to be filed; (c) the net reduction in revenues; (d) the amount collected by plaintiff in error under bond in the

various proceedings therein, and (e) the amount that would have been collected for the same service had the rates been charged in accordance with the schedule therein ordered to be filed.

43. The Commission erred in said order of March 1, 1934, in ordering that plaintiff in error submit to the Commission the original and present grouping of its several exchanges and the rates established for the scheduled services furnished by each before the protested advances in rates.

44. The Commission erred in said order of March 1, 1934, in ordering plaintiff in error to begin and prosecute with all diligence the repayment to its subscribers and patrons of such portion of the increased rates charged and collected by plaintiff in error from the effective dates thereof and also for the years 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932, as the Commission had found to be unreasonable and excessive; viz: $13,289,172, with interest.

45. The Commission erred in said order of March 1, 1934, in ordering that if any such monies so ordered to be repaid shall not be claimed by the corporation or persons entitled thereto in one year from the time the same shall become due and payable, as ordered by the Commission, such moneys shall be paid to the Treasurer of the County or other political subdivision in which such new schedule is effective for the benefit of its general fund and in such [fol. 833] amounts and in such manner as the Commission might order.

46. The Commission erred in said order of March 1, 1934, in ordering that the schedule of rates, charges, tolls and rentals for all classes of plaintiff in error's intrastate service furnished in the State of Ohio thereafter found and determined to be just and reasonable be substituted for the schedules of plaintiff in error on file and under investigation in said cause and in the proceedings consolidated therewith.

47. In each and all of the foregoing respects complained of the Commission erred in denying plaintiff in error's protests and applications and petitions for a rehearing of said cause and in failing to grant the same.

48. The Commission erred in denying plaintiff in error's application and request filed herein on the 17th day of

February, 1934, (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed in said cause, to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where plaintiff in error was and is collecting rates pursuant to bond as provided in said Robinson and Pence laws; and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January 16 and March 1, 1934, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause, and to which information plaintiff in error never had access.

[fol. 834] The action of the Commission in so denying said application and request has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

49. In each and all of the foregoing respects complained of, the said proceedings, acts, findings and orders of the Commission affect materially the substantial rights of plaintiff in error; are erroneous, prejudicial to it, unlawful, unreasonable, unjust, contrary to and not sustained by the evidence, and are against the weight of the evidence, and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio; and, further, are confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and deprive it of its property without due process of law, and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

* * * * * * *

Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for a rehearing filed by it in said cause No. 3307 on the docket of the Commission.

Wherefore, plaintiff in error prays that the said findings and orders of the defendant in error, The Public Utilities Commission of Ohio, made and entered in said cause No. 3307 on the docket of said Commission on the 16th day of January and March 1, 1934, be reversed, vacated and set aside by this Court as unlawful and unreasonable, and that plaintiff in error may be restored to all things which it [fol. 835] has lost by reason of the aforesaid findings and orders.

The Ohio Bell Telephone Company, Plaintiff in Error, by Randolph Eide, Its President; by Karl E. Burr, W. H. Thompson, W. B. Stewart, Its Attorneys. Ashley M. Van Duzer, of Counsel.

Duly sworn to by Randolph Eide. Jurat omitted in printing.

[fol. 836] IN SUPREME COURT OF OHIO

No. 24694

[Title omitted]

PRECIPE FOR SUMMONS IN ERROR

To the Clerk:

Issue summons in error in this cause for Public Utilities Commission of Ohio, Columbus, Ohio, defendant in error, directed to the Sheriff of Franklin County, Ohio, returnable according to law.

Karl E. Burr, W. H. Thompson, W. B. Stewart, Attorneys for Plaintiff in Error.

[fol. 837] APPENDICES A, B, C, D, E, F, G, H, I TO PETITION IN ERROR

[fol. 838] A—Tentative Finding of January 10, 1931.

B—Order of January 10, 1931 fixing value.

C—Protests of The Ohio Bell Telephone Company to value fixed in order of January 10, 1931.

D—Findings of January 16, 1934.
E—Order of January 16, 1934.
F—Application for rehearing of January 16, 1934 order.
G—Application and Request of The Ohio Bell Telephone Company of February 17, 1934.
H—Order of March 1, 1934.
I—Application for rehearing of March 1, 1934 order.

* * * * * * *

[fol. 839] IN SUPREME COURT OF OHIO

[31 O. S.]

Nos. 24694, 24695, 25023 and 25065

THE OHIO BELL TELEPHONE CO.

v.

PUBLIC UTILITIES COMMISSION OF OHIO (Four cases)

Public Utilities Commission—State-wide valuation of telephone company for determining rates—Price trends and judicial notice of economic conditions—Investment in construction work in progress—Cost and reproduction cost—Operating expenses—License contract service—Depreciation—Current maintenance, repairs, replacements and improvements—Rate of return—General normal economic conditions and during depression.

(Decided July 22, 1936.)

ERROR to the Public Utilities Commission

OPINION—STATEMENT OF THE CASE

Plaintiff in error, The Ohio Bell Telephone Company, has filed in this court petitions in error in causes numbered 24694, 24695, 25023 and 25065, wherein the company seeks to reverse the findings and orders of the Public Utilities Commission of Ohio entered on January 16, March 1, July 5, July 9 and September 6, 1934. For the purposes of convenience in the consideration of these causes by this court all of them have been consolidated into this cause.

Throughout this statement and opinion the plaintiff in error, The Ohio Bell Telephone Company, will be re-

ferred to as "the company," and the defendant in error, The Public Utilities Commission of Ohio, will be referred to as "the commission."

The commission's order of January 16, 1934, corrected by its order of March 1, 1934, fixed a final valuation of the intrastate property of the company at $93,707,488 as of June 30, 1925, the "date certain." The value for each succeeding year to and including 1933 was also fixed by the commission. The order also required the company to refund to its patrons in the state of Ohio the sum of $13,289,172, which amount the commission found to be the excess earnings of the company's entire intrastate operations [fol. 840] for the years 1925 to 1932, inclusive, and further directed the company to file a schedule of reduced rates effective as of June 30, 1925, and thereafter until changed by order of the commission.

Thereafter the commission made two reductions in the amount of the refunds as orginally ordered. The first reduction of $1,121,494 was made in the order of July 5, 1934, for the reason that a part of the excess earnings found by the commission to have been collected by the company were referable to rates not collected under bond, and under the laws of Ohio could probably not be ordered refunded. The second reduction in the sum of $355,414 was made in the commission's order of September 6, 1934, to correct an error. The amount of the refunds was finally fixed by the commission in its order of September 6, 1934, at $11,832,264, with interest.

In its order of July 9, 1934, the commission required the company to show cause why its future rates should not be reduced.

The proceedings presented for review arise out of the action of the commission in what has come to be known as the state-wide case of The Ohio Bell Telephone Company, being properly so designated because it involved an inquiry into the value of the property and rates of that company for both exchange and toll service throughout the state of Ohio.

Prior to the year 1914, Bell System service in Ohio was limited to the portions of the state served by the Cleveland Telephone Company, the Central Union Telephone Company, the Central District Printing & Telegraph Company and the Cincinnati & Suburban Bell Telephone Company

(the latter still operating as a separate company). At the same time and operating independently in the same territory in many localities were other telephone companies.

In July, 1914, a number of companies of the kind last referred to were consolidated under the name of The Ohio [fol. 841] State Telephone Company. In December, 1920, the Cleveland Telephone Company (its name having been changed to The Ohio Bell Telephone Company) purchased the Ohio property of Central Union Telephone Company. In September, 1921, The Ohio Bell Telephone Company and The Ohio State Telephone Company were consolidated as The Ohio Bell Telephone Company and that company thereafter purchased additional telephone properties. Even after these extensive consolidations there remained more than four hundred and fifty other independent telephone companies operating in the state.

As soon as The Ohio Bell Telephone Company (consolidated) was ready to unify the service in communities having a dual service, it filed with the commission an application to determine the rates chargeable for such unified service. In the case of some of the exchanges the municipalities concerned contested the proposed rates and a hearing was instituted. Subsequently, following the 1923 amendment of Section 614-20 of the General Code of Ohio (110 Ohio Laws, 366), the company filed new rate schedules for many of its exchanges; some of which were protested by the municipalities concerned and were collected under bond, after the end of the statutory period of suspension. This was true also with respect to the company's new schedule of toll rates for its toll service throughout the entire state.

As a result many extensive hearings were had by the commission, and in the two years prior to October, 1924, several thousand pages of testimony were taken and an even greater number of pages of exhibits offered in evidence.

On October 14, 1924, the commission, having found that many issues were common to all of the then pending Bell cases, both toll and exchange, ordered that they be consolidated and that the examination into the rates proceed as a single state-wide case involving all the rates and [fol. 842] services, exchange and toll, of The Ohio Bell Telephone Company, including those then under investiga-

tion, and that the evidence theretofore introduced, in the several separate cases, be considered and made a part of the record in the consolidated cases.

This order concluded as follows:

"Ordered, that, on or before December 1, 1924, said The Ohio Bell Telephone Company furnish to this commission and file in this cause, as a part of the evidence therein, a complete inventory of all of its property located in the state of Ohio and used and useful and to be used and useful, in the furnishing of telephone service therein, both toll and exchange, classified according to the classification adopted and prescribed by this commission and the Interstate Commerce Commission for telephone companies, and that, upon the filing of such inventory, this consolidated case proceed to a hearing for the determination of the fair value of said property and of the just and reasonable rates for the service thereby to be furnished by said company to its patrons throughout the state of Ohio."

By this order, forty-three separate cases then pending, the majority of which were for increased rates, were consolidated into the state-wide case.

Since the order of consolidation the company has made additional filings of exchange rates. Some were protested and are now collected under bond.

The company filed and offered in evidence an inventory and appraisal of its entire property.

In February, 1927, the case was submitted to the commission for the fixing of a tentative value, but before this valuation was announced the then attorney general requested that the case be reopened and further valuation testimony taken.

Following that date much time was consumed in taking testimony on behalf of the state, with rebuttal evidence on behalf of the company, and in April of 1930 the case was [fol. 843] again submitted to the commission for its finding on tentative value. This tentative valuation finding was issued on January 10, 1931, and in such finding the commission found the present value of the total property of the company as of June 30, 1925, to be $104,282,735.

On February 7 and February 9, 1931, protests to this finding were filed on behalf of the company and the state, respectively. Hearings on the protests were held on March 3 and 4, 1931. At that time counsel for the company was

preparing exhibits to show Western Electric profits, cost of license contract services rendered by the American Telephone & Telegraph Company, and separation of plant, revenues, and expenses, as between interstate and intrastate usage in accordance with the interpretation which counsel placed upon the decision of the Supreme Court of the United States in the case of Smith et al., Commerce Comm., v. Illinois Bell Telephone Co., 282 U. S., 133, 75 L. Ed., 255, 51 S. Ct., 65.

On April 15, 1931, hearings were resumed for the presentation of this testimony proffered by the company.

On June 17 and 18, 1931, during the cross-examination of Charles A. Heiss, comptroller of American Telephone & Telegraph Company, and R. H. Gregory, comptroller of Western Electric, certain requests were made for detailed information underlying their exhibits and testimony. In July of that year the company furnished certain data in accordance with its version of these requests.

A hearing was had on September 28, 1931, on the requests, and a few days later a revised list, dated October 1, was submitted.

On December 5, 1931, the company filed a brief, styled "memorandum responsive to state's official request for information." A reply to the company memorandum was filed with the commission on December 28, 1931. The mat-
[fol. 844] ter again came on for hearing on January 27, 1932.

On April 22, 1932, the commission issued its order in regard to the requests, approving some, denying others, and directing the attorney general and the company to expedite the proceedings.

The company continued to furnish data in compliance with this last order, the last being received on June 22, 1932. Practically all of the data requested related to American Telephone & Telegraph Company and Western Electric Company.

During the entire year 1932 the Illinois case was going forward, volumes of testimony and exhibits being introduced at hearings before Judge Wilkerson, as a result of the decision of the Supreme Court of the United States remanding that case to the statutory court for further findings. This evidence so introduced in the Illinois case re-

lated to the same general issues that were being presented to the Ohio commission.

Hearings were concluded and that record closed early in the fall of 1932, and all of the issues thoroughly briefed by counsel on each side. Five days were allotted early in December for oral argument before the full statutory court of three judges, at which time that case was submitted for decision.

Subsequently it was found that the material furnished by the company in professed compliance with the request made in June was inadequate and not responsive.

A great deal of time would have been necessary to formally introduce the same or similar testimony into the record of this case, so when hearings were resumed in this case on December 19, 1932, before the commission, a stipulation was worked out between counsel to file therein the testimony and exhibits in the Illinois case in so far as it related to the four issues, namely, Western Electric profits, Amer-[fol. 845] ican Telephone & Telegraph license contract service costs, separation of interstate and intrastate plant, revenues and expenses, and rate of return. As a result of this stipulation many days of hearing were saved. The stipulation provided, in substance, that the new record made in the Illinois case be incorporated in this record covering the testimony of certain specified witnesses and exhibits introduced through them and it also provided that all such evidence was introduced subject to the same objections made in the Illinois case. Certain additional exhibits relating to the Ohio company were introduced by stipulation, such exhibits having been prepared in the same manner as their correspondingly numbered exhibits in the Illinois case. The stipulation further provided for the introduction into this record of the requests made on behalf of the state, heretofore referred to, and the material furnished by the company in response thereto.

On December 29, 1932, the record in this case was closed on the introduction of certain testimony and exhibits of company witnesses and E. W. Wood on behalf of the state. Subsequently, under date of January 16, 1934, the commission made and entered its final order in this case, fixing the value of the property of The Ohio Bell Telephone Company as of June 30, 1925, the date certain in this case, and for each of the years subsequent thereto, through the ye

1932. Thereafter the commission's orders of March 1, July 5, July 9 and September 6, 1934, heretofore described, followed.

The orders of the commission provide for refunds in forty-four Ohio municipalities to more than 500,000 telephone subscribers.

The petition in error of The Ohio Bell Telephone Company is in the words and figures following:

"A

"The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of Septem- [fol. 846] ber, 1921, a corporation duly organized under the laws of Ohio.

"Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers stations, and of toll lines, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in said state telephonic messages, and has been and now is a public utility within the meaning of the General Code of Ohio.

"The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the 'Commission,' is now and has been continuously since 1913 an administrative body created by the laws of the State of Ohio.

"B

"This proceeding in error is brought to obtain a reversal, upon the grounds hereinafter stated, of the findings and order of the Commission made and entered on September 6, 1934, as well as the findings and orders of the Commission of January 16, March 1, July 5 and 9, 1934, (heretofore complained of in Causes Nos. 24694, 24695 and 25023 upon the dockets of this Court) in so far as said findings and orders form the basis for or are incorporated into said findings and order of September 6, 1934.

"The order of September 6, 1934, is the latest of a series of orders entered by the Commission in Cause No. 3307, which cause, inaugurated October 14, 1924, upon the Com-

mission's own motion, is an investigation and inquiry to determine the fair value of the property of The Ohio Bell Telephone Company and to fix just and reasonable rates, rules and regulations for its service.

"The order of September 6, 1934, requires plaintiff in [fol. 847] error to refund what the Commission found to be excess charges for its exchange services rendered during the years 1925 to 1932 inclusive, in the sum of $11,423, 137, and for its toll service for the years 1925 and 1926, the sum of $409,127, or a total of $11,832,264. The order fixes the amounts to be repaid to the subscribers in each of 44 exchange areas listed in Schedule A of said order and in the toll system and requires such repayment to be made within 90 days.

"C

"A brief history of the proceedings before and the findings and orders entered by the Commission, in so far as essential to the questions presented by this petition in error, is as follows:

"1. Prior to October 14, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence laws, respectively (108 Ohio Laws 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest had been made the subject of a separate case on the docket of the Commission. In each such separate case the Commission had suspended the effective date of the schedule and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter said rates had become effective pursuant to a separate bond filed with and approved by the Commission in each such case, conditioned for the repayment by plaintiff in error of the portion of such increased rates finally determined by the Commission to be excessive. In each such case plaintiff in error was proceeding to show separately the fair value of its [fol. 848] property and its net income and that the rates so made effective under bond were not excessive.

"2. On October 14, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's entire property and the reasonableness of its rates, and consolidated with said company-wide investigation (No. 3307) all of the then pending separate cases.

"3. Thereafter plaintiff in error filed separate schedules of increased rates for certain classes of its service in other exchanges, some of which schedules were in like manner suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. There are pending and undisposed of forty-five of such separate exchange cases and one such toll case, in which cases plaintiff in error has on file with the Commission bonds aggregating more than $14,000,000.

"4. Instead of determining said exchange and toll cases separately, the Commission in its said several orders herein referred to, has ordered plaintiff in error to make refunds based upon the Commission's findings of value of plaintiff in error's intrastate property as a single unit and of its aggregate net income therefrom, without having found or determined the fair value of plaintiff in error's property or the amount of its net income in respect of any separate exchange or its toll system, and without having found for any year or years that any portion of any rate was excessive.

"5. The Commission's first order, entered on January 10, 1931, tentatively fixed the fair value of plaintiff in error's total property, including the interstate portion thereof, as of June 30, 1925, at $104,282,735.

"6. On January 16, 1934, the Commission made its findings of final value for plaintiff in error's intrastate property as of June 30, 1925, by deducting from its tentative [fol. 849] finding the sum of $2,714,788 on account of the interstate property, and by further reducing such tentative finding in the following amounts, without any change in the pertinent evidence:

"(a) By deducting the sum of $316,090 from the allowance for right of way;

"(b) By eliminating the sum of $3,490,905 on account of going concern value;

"(c) By reducing the allowance for working capital, including materials and supplies, by the sum of $535,970; and

"(d) By deducting the sum of $3,296,181 from the amount of undistributed construction expenditures.

"The Commission's finding of final value of the intrastate portion of plaintiff in error's property as of June 30, 1925, was thus $93,707,488 or $7,639,146 lower than its finding of tentative value.

"The Commission also found the value of plaintiff in error's property for each succeeding year to 1933 by the application of price trends hereafter referred to.

"In the same order the Commission found that plaintiff in error had collected excess charges for its intrastate telephone service for the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172 and ordered plaintiff in error to refund to its subscribers said entire sum, with interest, and to file with the Commission a schedule of reduced rates for its telephone service effective retroactively as of June 30, 1925, and thereafter until changed by the order of the Commission.

"7. The Commission has consistently found that for the year 1933 plaintiff in error had earned no excess income, and therefore no refund has been ordered for that year.

"8. Pursuant to said orders of January 16 and March 1, 1934, plaintiff in error, on April 17, 1934, submitted to [fol. 850] the Commission, under a written protest, certain 'Rate and Revenue Data and Estimates' hereafter referred to.

"9. On July 5, 1934, the Commission made another order wherein it found that plaintiff in error had collected under bond in protesting exchanges and for its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $744,541 for such toll services, or a total of $12,167,678, being $1,121,494 less than the amount ordered refunded in its former orders.

"Said order required plaintiff in error to show cause upon August 1, 1934, why said refunds should not be ordered.

"10. On July 9, 1934, the Commission ordered plaintiff in error to show cause by August 1, 1934, why a further

order should not enter adopting and substituting for plaintiff in error's existing schedules of rates, 'said first or said second revision of existing schedules' of plaintiff in error (referring to the hypothetical rate calculations contained in the 'Rate and Revenue Data and Estimates' furnished by plaintiff in error under protest as aforesaid.)

"11. On September 6, 1934, the Commission entered the order herein complained of, wherein it found that plaintiff in error had collected under bond in protesting exchanges and from its intrastate toll services excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $409,127 from such toll services, or a total of $11,832,264, being $1,456,908 less than the amount ordered refunded in said orders of January 16 and March 1, 1934, and $335,414 less than the amount ordered refunded in the order of July 5, 1934; and ordered plaintiff in error to make repayment to its subscribers; all as set forth in said order and in Schedule A thereof. In its finding of September 6, 1934, the Commis-[fol. 851] sion stated that all prior findings and orders, pertaining to excess charges, conflicting with said finding of September 6, 1934, should be modified to conform to it.

"D

"Plaintiff in error, within the time required by law, appropriately challenged each of the findings, orders and rulings of the Commission and made certain written requests upon it, as follows:

"1. On February 7, 1931, protest to finding of tentative value of January 10, 1931, was filed by plaintiff in error. It was overruled by the Commission in its order of January 16, 1934.

"2. On February 6, 1934, plaintiff in error filed its application and petition for a rehearing with respect to the order of January 16, 1934. It was overruled by the Commission in its order of March 1, 1934.

"3. On February 17, 1934, plaintiff in error filed with the Commission its application and request:

"(a) That the Commission modify said findings and order of January 16, 1934, by finding that the rates charged by plaintiff in error are just and lawful rates and by estab-

lishing such rates as the rates thereafter to be charged by plaintiff in error for its services until changed or modified in accordance with law; (b) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed, to introduce evidence of the fair value of its property and its net income in each of the said separate causes, and (c) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error has never had access.

[fol. 852] This request was overruled by the Commission in its order of March 1, 1934.

"4. On March 9, 1934, plaintiff in error filed its protest, application and petition for a rehearing with respect to the order of March 1, 1934, and on the same day the Commission overruled the same.

"5. On April 17, 1934, pursuant to said orders of January 16 and March 1, 1934, plaintiff in error duly submitted to the Commission under written protest certain 'Rate and Revenue Data and Estimates' heretofore referred to.

"6. On July 31, 1934, plaintiff in error filed:

"An application and request, directed to the order of July 5, 1934, (a) for permission to inspect and rebut the undisclosed price trend information hereinabove in paragraph 3(c) referred to; (b) for a disclosure of the Commission's methods of apportionment and allocation employed in arriving at the refunds found therein; and (c) for the opportunity to introduce separate evidence in the separate bond cases as hereinbefore set forth;

"An application and request directed to the order of July 9, 1934, that the Commission fix plaintiff in error's present rates as the rates for its future service or, if the Commission intended to reduce its present rates, to permit plaintiff in error to show that the reduced rates proposed by the Commission would reduce the plaintiff in error's net income for the year 1934 by $1,800,000 and permit it to ea

less than 3½ per cent upon the fair value of its intrastate property for 1934;

"Verified return to the rule to show cause contained in the order of July 5, 1934;

"Verified return to the rule to show cause contained in the order of July 9, 1934;

"Protest of plaintiff in error against orders of July 5 and 9, 1934, and application and petition for rehearing with respect to said orders.

[fol. 853] "7. On August 1, 1934, the Commission overruled plaintiff in error's said application to establish its present rates as its rates for the future and on September 6, 1934, overruled all of the other applications, protests, petitions and returns referred to in paragraph 6.

"8. On August 29, 1934, plaintiff in error filed its protest against the Commission's ruling of August 1, 1934, and its further application and petition for a rehearing.

"9. On September 25, 1934, plaintiff in error filed with the Commission its application and request with respect to the Commission's order of September 6, 1934;

"a. To permit plaintiff in error, in accordance with the requests theretofore made by it, to introduce separate evidence in respect of each of the separate bond cases;

"b. To permit plaintiff in error to examine and rebut the price trend information hereinabove in paragraphs (3) and (6) referred to; and

"c. To make a disclosure with respect to the instructions of the Commission to its accountant, Wood, and his use of such instructions in making the apportionment of excess earnings.

"This application was denied by the Commission on September 27, 1934.

"10. On October 1, 1934, plaintiff in error filed with the Commission its protest against said order of September 6, 1934, and its application and petition for a rehearing of this cause which was denied on October 19, 1934.

"11. On October 1, 1934, plaintiff in error also filed with the Commission its application for a stay of the order of September 6, 1934, which application the Commission denied on October 19, 1934.

"Each and all of the exhibits, 'A' to 'U,' above referred [fol. 854] to are hereby incorporated herein and made a part hereof.

"E

"In said proceedings, acts, findings and orders, the Commission erred, as follows:

"1. In basing its said findings of value and orders upon alleged material and labor cost prices and trends obtained from various sources without plaintiff in error's knowledge, and not offered or introduced in evidence in any open hearing or made a part of the record in this case and to which plaintiff in error never had access and as to which it had no opportunity to cross examine, explain or rebut, as follows:

"(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

"(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

"(c) Building cost trends taken from the Engineering News Record;

"(d) Labor cost trends from the same publication;

"(e) Other labor and material cost trends obtained from various undisclosed sources.

"The Commission having fixed the fair value of plaintiff in error's property as of June 30, 1925, thereupon erroneously used the price trends obtained from the sources above referred to in fixing the fair value of plaintiff in error's intrastate property, for each of the years 1926 to 1933, both inclusive.

"The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and plaintiff in error had no opportunity to examine or cross examine as to such claimed proof or to explain or [fol. 855] rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied plaintiff in error a fair hearing and in determining this case admittedly considered

and gave controlling weight to evidence not introduced in any hearing.

"On February 17, July 31 and September 25, 1934, plaintiff in error filed the written requests heretofore referred to, each of which in specific terms asked the Commission to disclose the evidence on which it had arrived at the price trends above referred to and had fixed the value of plaintiff in error's intrastate property. These requests were all denied. The Commission mistakenly stated in its order of September 6, 1934, that plaintiff in error had been accorded ample opportunity to examine and consider all necessary and pertinent evidence. The record, however, is undisputed that plaintiff was never granted access to or an opportunity to examine any of the price trend information above referred to upon which the value of plaintiff in error's property for the years 1926 to 1933 was fixed.

"The findings of value and the orders of the Commission fixing the amount of the refunds, aggregating $11,832,264, which were necessarily based upon such claimed proof deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

"2. Plaintiff in error was deprived of its property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by the order of the Commission of September 6, 1934, ordering plaintiff in error [fol. 856] to refund to its exchange and toll subscribers the amounts set forth therein, because:

"The Commission refused to receive evidence showing separately for each year the fair value of plaintiff in error's property and net income and fair rate of return with respect to each separate exchange and plaintiff in error's toll system where rates had become effective pursuant to bonds as provided in the Robinson and Pence laws notwithstanding repeated written requests of plaintiff in error to introduce such evidence and repeated requests that a date be fixed for hearing the same.

"Said refunds therefore were ordered erroneously, arbitrarily and without any evidence upon which they can be sustained.

"3. Plaintiff in error's rates throughout the period in controversy in said cause were of two kinds:

"Those filed with the Commission and, following the statntory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence laws;

"Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

"In fixing the amount of the refunds attributable to the bond cases, the Commission made certain apportionments and an allocation as follows:

"1st. An apportionment of the alleged excessive earnings of plaintiff in error for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between protesting exchanges, that is to say, exchanges wherein any rate had been collected under bond in any of the aforementioned years, and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected;

"2nd. An allocation of $409,127 to plaintiff in error's toll system and of $11,423,137 to its protesting exchanges; and [fol. 857] "3rd. An apportionment of the sum of $11,423,137, the amount required to be refunded in its protesting exchanges, among said several exchanges.

"The Commission erred in making said apportionments and allocation, and in ordering plaintiff in error to make refunds as ordered, in the following respects:

"(a) It had no authority to require plaintiff in error to make refunds with respect to rates collected under bond without determining the fair value of plaintiff in error's property and its net income for each of its protesting exchanges separately and for its toll system. This the Commission refused to do. Instead, it arbitrarily used and applied accounting methods having no relation to property values and net earnings.

"(b) The Commission's method employed in making said apportionments and allocation was erroneous, arbi-

trary, inapplicable and not based upon any evidence in the case.

"(c) In arriving at the portion of excess earnings to be refunded both in exchanges and in the toll system, the Commission considered exchange service revenues only and ignored toll revenues. Its error in this respect was two-fold: first, plaintiff in error during the period involved received large revenues from its intrastate toll system and these revenues were disregarded in making the apportionment; second, the use of revenues as a basis is wholly improper because revenues are in no sense evidence of net earnings.

"(d) In making the apportionment between the protesting and the non-protesting exchanges the Commission included as bonded revenues in each year the total revenues in any exchange in which any rate had been collected pursuant to bond, although substantial portions of such revenues were not collected under bond, thereby erroneously [fol. 858] increasing by more than $4,000,000 the refunds required to be made by plaintiff in error.

"(e) Plaintiff in error was required to make refunds in excess of $400,000 in respect of its intrastate toll system for the years 1925 and 1926 although the Commission made no determination of the fair value of the intrastate toll property or its net income or that any toll rate was excessive.

"(f) The Commission did not find that any of plaintiff in error's exchange or toll rates collected under bond was unreasonable or excessive for any year. Without such finding the Commission could not under the applicable Ohio statutes lawfully order any refund.

"(g) The Commission used an arbitrary method in ordering said refunds, viz: for each of the years in controversy a refund for each exchange, based in each instance upon the same percentage of the amount of the increases in rates collected under bond, which basis was wholly without support in the evidence.

"(h) In making its apportionment of excessive earnings between protesting and non-protesting exchanges the Commission used the basis of total exchange service revenues. This method was necessarily based upon the assumption that there was included in each dollar of such total ex-

change service revenues an equal amount of excess net earnings. In its subsequent apportionment and allocation, the Commission abandoned this method and the necessary assumption upon which it was based and ordered refunds to the extent of $4,640,364 more than would have resulted from a consistent application of the first method.

"The action of the Commission with respect to such refunds and the apportionments and allocations upon which they were based deprived plaintiff in error of its property [fol. 859] without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"4. The findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

"(a) That the fair value of plaintiff in error's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925	$93,707,488
December 31, 1926	101,767,774
December 31, 1927	111,036,522
December 31, 1928	122,417,735
December 31, 1929	134,765,576
December 31, 1930	145,683,047
December 31, 1931	145,271,663
December 31, 1932	133,625,655
November 30, 1933	126,250,206

"(b) That the net income of plaintiff in error from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087

1931	11,102,418
1932	8,257,746
1933	6,959,232

"(c) That the reasonable rates of return which plaintiff [fol. 860] in error was entitled to earn upon said intrastate property were the following percentages for the following years:

1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ per cent per annum
1932 and 1933	5½ per cent per annum

"(d) In its finding and order of September 6, 1934, the Commission found that plantiff in error had collected excess charges under bond in protesting exchanges and in its intrastate toll system in the following amounts:

	Exchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
	$11,423,137.00	$409,127.00

"Upon such findings so made, the Commission on said date ordered plaintiff in error to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $409,127, or an aggregate amount of $11,832,264, together with interest thereon at the rate of six per cent (6%) per annum from the date of payment until the date of refund.

"The findings and orders of the Commission are erroneous, arbitrary, unreasonable, invalid and confiscatory of plaintiff in error's property in that the fair value of plaintiff in error's said intrastate property in each of the years 1925 to 1933 inclusive was largely in excess of the amounts so found by the Commission therefor; plaintiff in error's [fol. 861] net income was in each of said years substantially below the amounts found by the Commission as such; the

rates of return actually earned by plaintiff in error were substantially lower than those which the Commission found plaintiff in error had earned in each of said years, and the return to which plaintiff in error was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and plaintiff in error had no excessive or unreasonable net income in any of said years, all as more particularly shown in Specifications of Error Nos. 5, 6, 7 and 8, infra.

"5. The Commission should have found that the minimum fair value of plaintiff in error's intrastate property was at least $30,000,000 in excess of the values found by the Commission, set forth in (a) of Specification of Error No. 4, for each of the dates therein set forth.

"6. The Commission, instead of finding plaintiff in error's net income to be as set out in (b) of Specification of Error No. 4, should have found that plaintiff in error's net income from its intrastate business available for a return, was in no year excessive and was not more than the following amounts in each of the following years:

"1925, $6,014,180; 1926, $6,726,922; 1927, $7,260,885; 1928, $8,266,094; 1929, $8,200,940; 1930, $8,068,933; 1931, $8,115,568; 1932, $7,086,738; 1933, $6,160,952.

"7. The Commission erred in finding that plaintiff in error's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

"1925, 8.95 per cent; 1926, 9.01 per cent; 1927, 8.79 per cent; 1928, 8.57 per cent; 1929, 8.09 per cent; 1930, 7.52 per [fol. 862] cent; 1931, 7.64 per cent; 1932, 6.18 per cent; 1933, 5.51 per cent.

"The rates of return so found by the Commission are higher than the rates of return actually earned by plaintiff in error upon such property, in that, as shown by the evidence, the Commission found the fair value of plaintiff in error's intrastate property in each of such years to be too low as shown in Specification of Error No. 5 hereof, and found plaintiff in error's net income for each of such years

to be substantially higher than it actually was, as shown in Specifications of Error Nos. 4(b) and 6 hereof.

"The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned by plaintiff in error upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, respectively, as hereinafter in Specification of Error No. 8 set forth.

"8. The Commission erred in finding that plaintiff in error was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive	7 per cent per annum;
1930 to 1931, inclusive	6½ per cent per annum;
1932 and 1933	5½ per cent per annum.

"The Commission should have found upon the evidence that the rates of return at which plaintiff in error was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this respect the said orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. [fol. 863] "9. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously evaluating plant items manufactured by Western Electric Company and included in plaintiff in error's telephone plant in each of the following respects:

"(a) The Commission developed a trend for Western Electric prices from the prices of that company for telephone apparatus only and then applied such trend not only to plaintiff in error's telephone apparatus but to its lead covered cable and materials and supplies. This action resulted in undervaluing plaintiff in error's property.

"(b) The Commission having determined certain price trends for labor and material based upon the experience of manufacturers other than the Western Electric Company, applied such price trends to plaintiff in error's plant items

of Western Electric manufacture, although it conclusively appeared from the evidence that Western Electric Company's prices were lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others, and that Western Electric Company's earnings in its Bell business were at all times reasonable.

"(c) The Commission refused to give effect to an increase of approximately ten per cent in the price of telephone apparatus made by Western Electric Company under the following circumstances:

"The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Companies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western [fol. 864] Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

"10. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property

as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

"The actual cost of plaintiff in error's intrastate property (including cash working capital and materials and supplies as fixed by the Commission in said orders, but exclusive of construction work in progress) were the following sums as of the following dates respectively:

Date	Book Costs
June 30, 1925	$98,798,259
December 31, 1926	111,044,696
December 31, 1927	126,725,311
[fol. 865] December 31, 1928	$136,883,155
December 31, 1929	150,330,971
December 31, 1930	162,820,788
December 31, 1931	164,932,754
December 31, 1932	162,480,450
November 30, 1933	161,809,034

"1. The Commission erred in finding in its order of September 6, 1934, that plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intrastate services, exchange and toll, within the State of Ohio, the sum of $11,832,264 in excess of a fair return upon the fair value of its property and in ordering that plaintiff in error refund within ninety days therefrom the following amounts for the following years, to-wit:

	Exchange	Toll
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
Total	$11,423,137.00	$409,127.00

"There was no evidence in the case which justified any finding by the Commission that any refund should be made in any exchange or in the toll system with respect to any of the years in question, and no basis upon which the Com-

mission's order for such refund can be sustained. The order of the Commission in this respect deprives plaintiff in error of its property without due process of law and [fol. 866] denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"12. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the unreasonably low value of plaintiff in error's intrastate property as of June 30, 1925, as tentatively fixed by it in its order of January 10, 1931, in the following respects and by the following amounts:

"(a) By deducting the sum of $316,090 from the allowance for right of way;

"(b) By eliminating the sum of $3,490,905 on account of going concern value;

"(c) By reducing the allowance for working capital including materials and supplies, by the sum of $535,970;

"(d) By excluding and deducting the sum of $3,296,181 from the amount of the undistributed construction expenditures.

"In each of the foregoing respects, the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"13. The Commission erred in said findings and orders by failing to include any allowance for the going concern value of plaintiff in error's intrastate property in any year. In its tentative value order of January 10, 1931, the Commission found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. It made the allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical [fol. 867] plant. In its final findings of fair value, the Commission not only eliminated any allowance for going

value, but reduced the fair value of plaintiff in error's intrastate property as tentatively fixed in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise. The Commission's refusal to value the property as a going concern has deprived plaintiff in error of its property without due process of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

"14. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive,

"(a) By excluding from such valuation the following amounts of money invested by plaintiff in error during such respective years in telephone property in process of construction, viz:

1925, $2,161,109; 1926, $4,168,837; 1927, $3,658,921; 1928, $2,059,240; 1929, $2,992,501; 1930, $4,750,748; 1931, $4,874,625; 1932, $810,383; 1933, $2,606,456.

"(b) By disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect to the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

"(c) By limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the [fol. 868] amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

"(d) By allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error.

"(e) By allowing an inadequate amount for the item of plant supervision and tool expense.

"The Commission's exclusion of such amounts deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"15. The Commission erred in finding that the actual existing depreciation in plaintiff in error's said intrastate property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted on account of the existing depreciation in plaintiff in error's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

"16. The Commission erroneously refused to include [fol. 869] in plaintiff in error's necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of plaintiff in error's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

"17. The Commission purported to allow in plaintiff in error's operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of four per cent per annum of plaintiff in error's depreciable intrastate property, although its actual allowance therefor was less than four per cent. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation in respect of plaintiff in error's intrastate property:

"1925, $4,914,980; 1926, $5,371,921; 1927, $5,815,204; 1928, $6,457,602; 1929, $7,484,033; 1930, $8,247,474; 1931, $8,549,677; 1932, $6,892,986; 1933, $6,269,772.

"The Commission's action in these respects deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"18. Plaintiff in error's annual expense of depreciation was based upon evidence of service life and salvage of the several classes of its depreciable property, which evidence [fol. 870] was undisputed. The Commission erred in ignoring such evidence and in fixing arbitrarily what it states was a rate of four per cent per annum, although in fact less than that amount. In doing so, the Commission purported to adopt the retirement theory of depreciation accounting, but in fact based its allowances upon the experience of the company for a period antedating the period in controversy. The Commission's allowance for depreciation expense for the period 1925 to 1931 was $9,852,737 less than actual expense of retirements during that period. Plaintiff in error was entitled for the expense of depreciation to a sum substantially in excess of the expense of its retirements, and the action of the Commission in allowing less than such expense deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"19. The Commission erroneously refused to permit the deduction from plaintiff in error's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by plaintiff in error to the

American Telephone and Telegraph Company on account of license contract services rendered by said company to plaintiff in error, viz:

"1925, $732,429; 1926, $682,004; 1927, $741,006; 1928, $320,448; 1929, $175,773; 1930, $100,906; 1931, $94,350; 1932, $23,302.

Said sums of money were paid by plaintiff in error to said American Telephone and Telegraph Company for services actually rendered by the latter to plaintiff in error, which services were required by plaintiff in error in the rendition of its intrastate service in the State of Ohio.

"The Commission's refusal to allow plaintiff in error to make such deductions from its gross income or to treat such [fol. 871] payments as an operating expense for each of such years deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"20. The Commission erred in failing to make adjustments in plaintiff in error's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 16 and 19, supra.

"21. The reproduction cost new and the fair value of plaintiff in error's property as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, are less than the actual, true and correct reproduction cost new and fair value thereof and are therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of plaintiff in error's classes of property.

"The Commission erred in overruling plaintiff in error's protest against said tentative value order.

"22. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring, for the purpose of reducing plaintiff in error's future rates, that plaintiff in error file, effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission, such schedules of reduced rates for plaintiff in error's intrastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date. This requirement of said

last mentioned orders plaintiff in error complied with on April 17, 1934, by submitting to the Commission, under protest, 'Rate and Revenue Data and Estimates.'

"Said orders deprive plaintiff in error of its property without due process of law and deny to plaintiff in error [fol. 872] the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

"(a) The action of the Commission was an attempt to accomplish indirectly that which it could not directly do, viz.: to deprive plaintiff in error of the opportunity to earn a fair return upon the fair value of its property by reducing plaintiff in error's present rates, although they are now producing, as the Commission found in said orders, no more than a fair return on the present value of said property as found by the Commission.

"(b) In said findings and orders of January 16, and March 1, 1934, the Commission found that for the year 1933 plaintiff in error was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that plaintiff in error's net income from said property for that year at its present rates did not exceed such a return. Any reduction in plaintiff in error's present rates would necessarily reduce its net income below the amount found by the Commission to be fair, and would be unjust and unreasonable.

"(c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

"(d) Under the applicable Ohio statutes the Commission had no authority to require plaintiff in error to file schedules of rates effective retroactively.

"(e) The action of the Commission in this respect was erroneous and in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

"(f) Such order attempts unlawfully to reduce plaintiff [fol. 873] in error's rates for its present and future service, by ordering plaintiff in error to make effective, for such

service, rates not in issue in any of the separate bond cases and in respect of which no hearing or proof has been had.

"In addition, the hypothetical rates contained in the 'Rate and Revenue Data and Estimates' which plaintiff in error was compelled to and did furnish to the Commission on April 17, 1934, could not lawfully be made the basis of any order fixing rates for the future for plaintiff in error for each of the following reasons:

"(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to plaintiff in error's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of September 6, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount approximately $450,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

"(b) The hypothetical rates contained in said 'Rate and Revenue Data and Estimates,' if they had been in effect during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper for said years respectively, either in its said orders of January 16 and March 1, 1934, its order of July 5, 1934, or its order of September 6, 1934.

"(c) Many of the decreases shown in the hypothetical rates in said 'Rate and Revenue Data and Estimates' are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its order of July 5, 1934, and September 6, 1934, required refunds to be made only with respect to rates made effective pursuant to bond, said hypothetical rates could have no ap- [fol. 874] plication to the orders of the Commission as now modified.

"(d) The Commission had no right to fix rates for plaintiff in error's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of plaintiff in error for the year 1925. In determining rates for the present and future the Commission was required to consider the fair value of plaintiff in error's property, its revenues, expenses and net income for the most recent period available. Although the Commission, in determining the

refunds to be ordered, found even on the low value of plaintiff in error's intrastate property as fixed by the Commission for the year 1933, and upon the Commission's own findings in respect of revenues, expenses and net income for that year, that plaintiff in error was earning only a barely compensatory return for that year and therefore upon such finding made no order of refund against plaintiff in error for the year 1933, nevertheless, the Commission has refused to consider and give effect to the same evidence, in respect of plaintiff in error's present and future rates.

"23. The Commission erred in its findings and orders in failing to continue the existing rates of plaintiff in error in effect for the present and future and in overruling the written requests of plaintiff in error so to do filed in this cause on February 17, July 31 and August 29, 1934.

"Plaintiff in error showed the Commission that if permitted it would prove that if either of the revisions of rates proposed by the Commission should be made effective the result would be to reduce plaintiff in error's net income from its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio. The Commis-
[fol. 875] sion found that for the year 1933, plaintiff in error had earned only a barely compensatory return.

"It was the duty of the Commission under the evidence in this cause and its own findings to determine that the existing rates of plaintiff in error were no more than just and lawful rates to be charged for the present and future until modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, plaintiff in error was entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934, and thereby to prove that any such reduction would be unlawful and unreasonable.

"The action of the Commission in denying plaintiff in error's request and in requiring it to render future services in Ohio at admittedly confiscatory rates has deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"24. The Commission erred in overruling, denying and in failing to comply with plaintiff in error's several applications and requests filed on February 17, July 31, August 29, and September 25, 1934, asking: (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be no more than just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the requests theretofore made by it and thereby renewed to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate [fol. 876] cases where plaintiff in error was and is collecting rates pursuant to bonds; and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January 16, 1934, and the Commission's method of applying the same, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause, and to which information plaintiff in error had never had access and as to which method it has never been informed.

"The action of the Commission in so denying said applications and requests has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"25. The Commission erred in requiring plaintiff in error to repay unstated portions of its intrastate toll rates collected under bond 'to the persons, subscribers and patrons paying the same, nothwithstanding payments for said services were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service.' Plaintiff in error cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by it to make any refunds except to persons who are its subscribers or patrons.

"26. Plaintiff in error has been denied a fair trial and hearing in respect of the fair value of its property; it has been denied a fair trial and hearing in respect of whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond and it has been denied any trial with respect to [fol. 877] the just and reasonable rates for its present and future service. Such denials have resulted in depriving plaintiff in error of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"27. The Commission erred in its order of September 6, 1934, in requiring the repayment by plaintiff in error to its intrastate toll users of the sum of $232,282 for the year 1925 and the sum of $176,845 for the year 1926 without having made a determination of the fair value of plaintiff in error's property and its revenues, expenses and net income in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that plaintiff in error had, in any year, made any excessive earnings in its toll system.

"Plaintiff in error demanded the right to prove the fair value of its property used in rendering its intrastate toll service and to show the net income from such property. The Commission refused to receive such evidence. Therefore, it could make no valid order requiring any refunds to be made by respondent on account of toll rates collected under bond and the Commission's orders in this respect deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"28. The Commission erred in its order of September 6, 1934, in the following respects and each thereof:

"(a) It denied the protest and application and petition of the plaintiff in error asking, for the reasons and upon the grounds set forth therein a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein upon July 5, 1934;

"(b) In finding, as set forth in said order of September [fol. 878] 6, 1934, that it had accorded plaintiff in error ample opportunity to examine and consider all necessary and pertinent information requested in plaintiff in error's application and request directed to the Commission's order of July 5, 1934, and in overruling said application and request;

"(c) In overruling the verified return of plaintiff in error to the rule to show cause contained in the Commission's findings and order of July 5, 1934, and the prayer thereof;

"(d) In ordering that all protests and objections to the Commission's finding of July 5, 1934, filed and made by plaintiff in error, inconsistent with the order of September 6, 1934, be overruled.

"29. The Commission further erred in overruling on October 19, 1934, (a) the protest, application and petition of plaintiff in error for a rehearing filed on October 1, 1934, and (b) its said application for a stay, postponement and suspension of the enforcement of the orders of the Public Utilities Commission of Ohio in so far as they order and direct plaintiff in error to make the repayments and refunds ordered by the Commission.

"In each and all of the foregoing respects complained of, and in denying plaintiff in error's protests, applications and petitions for rehearing, the said proceedings, acts, findings and orders of the Commission and each and all thereof affect materially the substantial rights of plaintiff in error, are erroneous and prejudicial to it and are unlawful, unreasonable and are not supported by evidence, are against the weight of the evidence and contrary to the evidence and the law and in violation of the applicable Ohio Statutes and of Article 1 Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and deprive it of its property without due process of law [fol. 879] and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for a rehearing filed by it in cause No. 3307 on the docket of the Commission.

"Wherefore, plaintiff in error prays that said findings and orders of defendant in error, the Public Utilities Commission of Ohio, made and entered in said cause No. 3307 on September 6, as well as the orders of January 16, March 1, July 5 and July 9, 1934, in so far as said findings and orders form the basis for or are incorporated into the findings and order of September 6, 1934, and each of them, be reversed, vacated and set aside by this Court as unlawful and unreasonable and that plaintiff in error may be restored to all things lost by reason thereof."

The various findings and orders made by the commission and the procedural steps taken by the company are brought into the record through exhibits "A" to "U" inclusive. These exhibits are too voluminous to carry into this statement and we are content to set out a list of same, with designating letter.

"A" Tentative Finding of January 10, 1931.

"B" Order of January 10, 1931, fixing value.

"C" Protest of the Ohio Bell Telephone Company to value fixed in order of January 10, 1931.

"D" Findings of January 16, 1934.

"E" Order of January 16, 1934.

"F" Application for Rehearing of January 16, 1934, order.

"G" Application and Request of the Ohio Bell Telephone Company of February 17, 1934.

"H" Order of March 1, 1934.

[fol. 880] "I" Application for Rehearing of March 1, 1934, order.

"J" Order of July 5, 1934.

"K" Order of July 9, 1934.

"L" Application and Request of the Ohio Bell Telephone Company of July 31, 1934, with respect to the order of July 5, 1934.

"M" Application and Request of the Ohio Bell Telephone Company with respect to the order of July 9, 1934.

"N" Verified Return to the order to show cause contained in the order of July 5, 1934.

"O" Verified Return to the order to show cause contained in the order of July 9, 1934.

"P" Protest and Application for Rehearing of July 5 and July 9, 1934, orders.

"Q" Protest and Application for Rehearing filed August 29, 1934.

"R" Order of September 6, 1934.

"S" Application and Request of the Ohio Bell Telephone Company of September 6, 1934.

"T" Protest and Application for Rehearing of September 25, 1934, with respect to the order of September 6, 1934.

"U" Application to the Commission for a stay.

The Commission took judicial notice of the trend of prices during the years involved in this proceeding and for the purposes of its determination and finding referred to and considered a periodical publication known as The Engineering News Record, and the company avers used other sources of information to it unknown; also, considered prices of materials furnished by manufacturers of telephone equipment and land values as ascertained from tax valuations, all of which it is claimed was erroneous. That on February 17, July 31 and September 25, 1934, the company filed written requests with the commission asking [fol. 881] it to disclose the evidence upon which it arrived at price trends, all of which was refused.

With the mechanics governing the proper distribution of the refunder herein, this court at this time has nothing to do.

This fact is in dispute.

The petition in error and the exhibits make up the entire record of the case. For the means used and the methods followed by the commission in determining the rate base and rate of income, reference must be had to the petition in error, exhibits and briefs of counsel.

Mr. Karl E. Burr, Mr. W. H. Thompson, Mr. W. B. Stewart and Mr. Ashley M. Van Duser, for plaintiff in error.

Mr. John W. Bricker, attorney general, and Mr. Donald C. Power, for defendant in error.

By the Court:

Valuation Including Price Trends

As of the date certain of June 30, 1925, the commission fixed the tentative valuation of the company's property at $104,282,735. Subsequently this was reduced $10,575,247. Item by item the company complains about the commission's figures such as those relating to right of way, land,

buildings, central office equipment, distributing system, undistributed construction costs, going concern value and construction work in progress. However, a laborious study of the super-abundant record of approximately 70,000 pages discloses a sharp conflict of competent evidence on every point, and under such circumstances this court cannot properly hold that the findings of the commission are against the weight of the evidence. Illustrative of this fact is the matter of intangible, undistributed construction expenditures. One witness expressed the opinion that the allow-[fol. 882] ance for this item should be approximately $19,088,000; another that it should be $18,525,000; another that it should be $16,000,000; and still another that it should be $12,000,000. The commission after hearing and seeing the witnesses allowed $12,650,148. Certainly this court is at least in no better position to appraise the value of this conflicting testimony.

It is contended that there was failure to consider certain vital elements in determining questions of valuation. For instance, the claim is made that the commission excluded from the property value money necessarily invested in construction work which was in progress, in an average annual amount of $3,000,000 for the nine-year period.

The commission held that no allowance could be included for this work in determining value for rate-making purposes, because the property was not complete and ready for service and therefore not used and useful property in the service of the public within the meaning of Sections 499-8, 499-9, 614-20 and 614-23, General Code. An allowance was made, however, for the item of interest during construction, which fully and adequately compensated the company for the use of its capital which was invested in unfinished construction work, and the amount of allowance so made entered into the rate base which was fixed by the commission. Furthermore, allowance was made for capital so invested as soon as the new construction came into use, and provision was also made for the capitalization of materials used in construction and inventories on hand before they were used in the process of construction.

It is also contended that no consideration was given to the cost of property and the cost of reproduction of property. It may be conceded that such costs are relevant facts to be considered in determining values. Los Angeles Gas &

Electric Corp. v. Ry. Comm. of California, 289 U. S., 287, [fol. 883] 306, 77 L. Ed., 1180, 53 S. Ct., 637.

In support of its contention that cost of property was ignored, the company offered a table which purports to show cost of the company's intrastate property aside from construction work in progress, and similar facts. But there is nothing in the record to show that the evidence so offered was not considered, along with the other evidence in the case relating to cost, in determining the rate basis.

As to the claim that the commission did not consider cost of reproducing property, the record discloses that evidence was adduced relating thereto and there is entire absence of a showing anywhere in the record that the commission failed to give proper consideration to such evidence bearing upon the question of expense of reproducing essential property.

A careful consideration of all claims of the company relating to alleged omissions or failure to consider certain elements of value discloses that the contentions are not borne out by the record. In fact, it appears that the commission determined its rate base from all the evidence before it, including that relating to these alleged ignored items, and thus reached the conclusion it did relative to the basic valuation fixed for determining a fair and reasonable rate.

Likewise the company strenuously complains because, although neither side introduced evidence of price trends, the commission took judicial notice of such trends; but even a casual examination of the decisions of the United States Supreme Court unquestionably discloses definite and repeated sanction of this principle.

In the case of Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky, 290 U. S., 264, 78 L. Ed., 307, 54 S. Ct., 154, Mr. Justice Stone stated that one ground for reversal of the judgment of the lower court was its exclusion "from consideration the profound changes in [fol. 884] values, costs of service, consumption of commodities and reasonable return on invested capital which we judicially know took place during the period of more than five years while the case was pending before the Commission and the Court." Then in the ninth paragraph of the headnotes of that case, as reported in 78 L. Ed., appears the statement that "judicial notice may be taken of

changes in values, cost of service, consumption of commodities and reasonable return on invested capital which have taken place during the period while a case was pending before the Utilities Commission and the Court."

In the later case of Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 292 U. S., 290, 78 L. Ed., 1267, 54 S. Ct., 647, Mr. Justice Cardozo said that "in view of business conditions, of which we take judicial notice, * * * the rate allowed was adequate." Then in the twenty-fourth paragraph of the headnotes of that case in 78 L. Ed., it is stated that "the Supreme Court of the United States takes judicial notice of business conditions."

In the Dayton case, supra, Mr. Justice Cardozo cites the case of Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S., 248, 76 L. Ed., 273, 52 S. Ct., 146, in which Mr. Chief Justice Hughes said that "There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice." Then in the second paragraph of the headnotes of the case in 76 L. Ed., appears the statement that "the Court may take judicial notice of a general economic depression."

In view of these authorities it is readily apparent that the commission committed no error in this respect.

Operating Expenses

In the matter of operating expenses, the commission apparently accepted and applied the testimony of the company in the consideration and determination of most of the [fol. 885] items involved. That was true as to the very important item covering cost of current maintenance, including salaries, in which there was no reduction whatever from the claims of the company.

We shall refer particularly to the amount urged by the company for allowance for license contract services. These charges were seriously challenged by the commission. They have reference to certain services furnished the Ohio Bell Telephone Company by the American Telephone & Telegraph Company and other associated companies, compensation for which was computed at a stated per cent of the gross revenues.

Such license contract provides that the licensee was to receive from the licensor in addition to all other services

and benefits accruing to the licensee, the described services and privileges which have been briefly summarized as follows: (a) The right to use all telephonic devices covered by patents owned by the licensor and all new improved apparatus in the art of telephony resulting from experimental work under the direction of the licensor, and protection against all suits for infringement. (b) The continuous prosecution by the licensor of research work in the development of the art and the plans designed to promote economy and efficiency in equipment of the plant of the associated companies. (c) Advice in engineering, traffic, operating, commercial, accounting, patents, legal, administrative and other matters pertaining to the successful conduct of the telephone business. (d) Advice and assistance in any financing required to be done by the licensee in the extension of its plant or improvement to its system, and assistance in marketing licensee securities and other necessary financial support. (e) The right to extend to subscribers of the licensee the connections provided between its system and the system of other associated companies and their subscribers. (f) Active assistance in connection with such [fol. 886] measures as will best protect the health of employees and in other ways conserve the high quality of service and maintenance by the licensor of various pension and insurance plans. (g) the right of the licensee to extend to its connecting companies the benefit of the advice and information that the licensee may receive from the licensor.

In order that the services may be promptly performed the licensor was to (a) Render available for use of the Bell Company all products of the licensor's research and all inventions, etc., relating to the art of telephony, which, after investigation, are pronounced by the technical experts of the licensor to be of practical use. (b) Maintain continuously an organization of specialists to relieve the licensee from the necessity of performing such work. (c) Maintain facilities for connection between the system of the licensee and the system of other associated companies.

The contract provides for full service between the exchange of the licensee and the toll lines of the licensor setting out provisions for payment of interline service.

The company classifies the costs for services claimed to have been rendered, but which were rejected in whole or

in part by the commission, in the following departments: Development and research; information; personnel; public relations; treasurer's; comptroller's; secretary's; administration and general service; operations; depreciation of telephone instruments; contingent liability for patent infringement.

The commission was of the opinion that valuable service was rendered the Ohio Bell Telephone Company by the American Telephone & Telegraph Company, which concededly is the parent corporation, and that a substantial portion of the payments claimed to have been made to defray the costs of the parent company in providing such service should be, and they were accordingly, allowed. It [fol. 887] found, however, that a portion of the payments so claimed resulted in no benefit to the Ohio Bell Telephone Company and should not be included as a part of its operating expenses. In view of the uncertain and indefinite character of the proof based in great measure upon estimate and opinion, if not conjecture, it cannot be said that the findings and conclusions of the commission were unfair or unreasonable, and certainly there is no basis for finding that they were unlawful.

The commission followed the admonition of the Supreme Court of the United States in the Illinois proceeding reported in Smith et al., Commerce Comm., v. Illinois Bell Telephone Co., 282 U. S., 133, 75 L. Ed., 255, 51 S. Ct. 65, and Lindheimer et al., Commerce Comm., v. Illinois Bell Telephone Co., 292 U. S., 151, 78 L. Ed., 1182, 54 S. Ct., 658, and endeavored to ascertain the cost to the American Telephone & Telegraph Company of the service furnished by it to the Ohio Bell Telephone Company. It did not and was not bound to accept fully and unconditionally the statements of the company as to the amount claimed to have been paid to the parent company; nor was it concluded thereby as to the reasonableness or propriety of such service; nor bound to regard the amount paid as the true value of such service to the Ohio Bell Telephone Company. Just as in other respects, its findings and conclusions upon these items will not be disturbed unless shown to be manifestly against the weight of the evidence or in contravention of law.

For instance, the commission allowed the claim for engineering service in its entirety. On the other hand, it denied

in its entirety the claim made for services rendered in its information department, it having found that the general advertising of the American company, national in scope, did [fol. 888] not relate to the Ohio Bell Company as such, and that such general advertising should not be paid by the Ohio telephone users.

The commission found that the department of development and research did much for the benefit of the associated companies. It rejected some of the costs and expenses claimed because not related to Ohio Bell Telephone operations. These charges were for television, radio, submarine, cable and other similar items.

In the so-called personnel department, many items of cost were allowed as claimed, those disallowed having been found rather in the interest of the holding company than of the licensee and hence not proper charges against the rate payer of the operating company.

So also as to the public relations department, the commission found that no part of such cost should be considered in determining the rate to be paid by the Ohio telephone user for the same reason.

The partial disallowance of the charges made for the treasurer's and comptroller's departments, and the total disallowance of the charges of the secretary's department and the department of operations, were likewise based upon its finding that those services were solely for the benefit of the parent company. The so-called general service bureau is referred to as a coordinating department in which general administration costs were included. It seems to be a sort of catchall for items that might possibly have been omitted from some classification. The allocation was uncertain and unsatisfactory. The commission was probably about right when it allowed half of the amount claimed. The same may be said of its allowance for depreciation of telephone instruments.

It does not appear how there could be justification for a specific allowance for contingent liability for patent in- [fol. 889] fringements, for it does not appear that there has been any actual cost to the American company in the way of loss or damage because of patent infringements of apparatus used by the Ohio Bell Telephone Company, and the mere possibility is too remote and speculative to

warrant a charge against the telephone user. So the commission found, and their finding seems commendable.

We deem it unnecessary to discuss in detail each of these specific claims of expenditure for service rendered by the parent company. Suffice to say that from an examination thereof we are of the opinion that the conclusions reached by the commission were just and the allowances made fair and reasonable, and hence should not be disturbed.

The item, expense of depreciation, was recognized by the commission as a legitimate part of the operating costs. The elements of maintenance and of essential replacements were regarded as factors, and it was conceded that the telephone user must, as part of his rate, provide funds to meet the wear and tear upon the physical plant resulting from the year's operations, and such expense entered into the calculations of the commission, as disclosed by its detailed findings. Its findings and conclusions thereon were apparently reached after careful consideration of the volume of testimony introduced and record evidence placed before it, and we find no warrant for their disapproval.

Depreciation

The commission makes the unchallenged statement in its brief that "With the exception of the amounts claimed by the company for the expense of depreciation, license contract costs and Western Electric purchases chargeable to expense, the commission allowed without question all of the operating expenses contended for by the company."

There are two sections of the General Code of Ohio ex- [fol. 890] pressly dealing with the subject of "depreciation" in relation to public utilities.

Section 614-49, General Code, provides: "Every public utility shall carry a proper and adequate depreciation or deferred maintenance account, whenever the commission after investigation shall determine that a depreciation account can be reasonably required. The commission shall ascertain, determine and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility. The charge for depreciation shall be such as will provide the amount required over and above the cost and expense of maintenance to keep the property of the public utility in a state of efficiency corresponding to the progress of the art or industry. The

commission may prescribe such changes in such charges for depreciation from time to time as it may find necessary."

It is further provided, in Section 614-50, General Code, that "The moneys for depreciation charges thus provided for shall be set aside out of the earnings and carried as a depreciation fund. The moneys in such fund may be expended in new construction, extensions or additions to the property of the public utility, or invested, and if invested, the income from the investment shall also be carried in the depreciation fund. Such fund and the proceeds thereof, may be used for the purpose of renewing, restoring, replacing or substituting depreciated property in order to keep the plant in a state of efficiency. Such fund and the proceeds or income therefrom shall be used for no purpose other than as provided in this section, except upon the approval of the commission."

In the case of Lindheimer v. Illinois Bell Telephone Co., supra, Mr. Chief Justice Hughes succinctly defines "depreciation" as "the loss, not restored by current maintenance, which is due to all the factors causing the ultimate [fol. 891] retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence."

Upon the merger or consolidation of September 21, 1921, the company began business with property having a book value of $77,839,932 and a depreciable value of $69,070,160. Several additional properties of considerably smaller valuation were acquired afterwards. With perhaps one exception they were taken over at net cost, with no reserve for accrued depreciation or amortization.

The commission found that from the date of merger the company pursued the policy of keeping its property in good condition and in high state of efficiency, expending for current maintenance and repairs from the time of merger to the date certain, viz., June 30, 1925, the sum of $16,385,139, and from the date certain to December 31, 1931, the further sum of $42,064,639, which the commission denoted as liberal.

While expending the sums mentioned for current maintenance and repairs, the company's net charges to reserve for depreciation from the date of merger to the date certain were $11,349,664, and from the date certain to December 31, 1931, amounted to $40,956,301.

As is pointed out in the Lindheimer case, supra, it is

extremely difficult as a practical matter to draw a definite line between funds accredited to current maintenance and repairs and those allocated to depreciation. It stands to reason that when proportionately large amounts are expended in maintaining the plant of a public utility in a high state of efficiency and good condition, the amount necessary for depreciation expense should be correspondingly less. Pioneer Telephone & Telegraph Co. v. State, 64 Okla., 304, 167 P., 995, L. R. A., 1918C, 138.

In view of our future remarks on the subject of depreciation as it pertains to this case, it would now seem appropriate to call attention to certain pronouncements of the Supreme Court of the United States in the Lindheimer [fol. 892] case, supra. It was there said in substance that where a public utility complains that rates ordered by a regulatory body are confiscatory, the utility "has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive," and that since charges to depreciation should be representative of the expense occasioned to the public utility by the using of physical property employed as fixed capital, excessive charges for such object have the wrongful and indefensible effect of requiring patrons to provide capital contributions, not to make good losses incurred by the utility in the service rendered and thus keep its investment unimpaired, but to secure additional plant and equipment upon which the utility expects a return.

Since in the instant case the amounts charged to depreciation were included in the rates imposed against the company's subscribers, the commission felt obligated to investigate the matter of depreciation from the date of merger through the year 1933, to arrive at a fair and just result.

There can be little argument that when the consolidation of 1921 occurred, and upon the acquisition of additional properties, the company should have provided from capital contributions or charged to surplus the amount necessary to replace worn out, obsolete and useless units.

From evidence presented the commission found that at the date of merger the company's property was actually in a per cent condition approximating 83 per cent, which required a depreciation reserve of $14,638,870, but that with depreciable fixed capital of $69,049,424, a depreciation re-

serve of only $6,219,829 was supplied, according the property an erroneous per cent condition of about 91 per cent.

While admittedly the company made extensive replacements and improvements between 1921 and 1925, with an [fol. 893] annual increase in depreciation reserve, the per cent condition, according to the company's records, steadily declined, reaching a low of 87.51 per cent on the date certain.

Obviously, this presented an extraordinary situation and suggested to the commission that the charges to depreciation reserve during the initial years of the company's existence were in excess of the inadequate amount furnished for depreciation at the date of merger, and that in order to sustain a credit balance in the depreciation reserve to make good the original deficiency, the company included excessive amounts for depreciation in its charges to current operating expenses, which were reflected in the rates to subscribers.

In support of this conclusion, the commission engaged in an elaborate set of calculations covering the period from September 21, 1921, through 1933, included in its brief in tabulated form.

This table purports to show that from September 21, 1921, through the year 1924 the company retired its original depreciable plant to the extent of a net realized depreciation of $8,479,728, which indicated too much retirement in too short a time, in light of the erroneous 91 per cent condition accorded the depreciable property by virtue of the insufficient depreciation reserve set up in the beginning.

Upon computations extending through 1933 the commission found that the total charges against the reserve for depreciation were $59,339,088, of which $38,270,252 was covered by the additions to the reserve since September 21, 1921, $6,219,829 was covered by the reserve in existence as of September 21, 1921, and $14,849,007 was representative of the amount of realized depreciation in excess of the credits which had been made to the depreciation reserve on the assets replaced.

Under a mass of figures, the continuation which would [fol. 894] but lend to confusion, the commission contended that the company should have begun operations with additional reserve for depreciation of $14,849,007, or that this amount should have been charged to surplus.

On the basis of "per cent condition," the commission determined that the company's initial reserve for depreciation should have been $14,638,870, instead of $6,219,829. Such discrepancy resulted in the elimination of the difference, viz., $8,419,041, as charges against the depreciation reserve, representing as it did losses antedating the merger, and which the company had charged to operating costs thereafter, at the expense of its subscribers.

Thus, the commission was unable to escape the conclusion that the company had commenced business with a grossly indequate depreciation reserve, and that this deficiency together with appreciable replacements and changes made necessary by consolidation, which should have been contributed by capital or taken from surplus were financed by abnormal depreciation charges and corresponding credits to the depreciation reserve during twelve and one-quarter years of the company's existence, and especially up to and including the year 1931.

Substantiating its findings that the company from its beginning had created an excessive reserve for depreciation to absorb the amount which should have been furnished at the start, the commission points out in its brief that from 1922 through 1931 the company's composite depreciation rate ranged from 5.68 per cent to 5.92 per cent, but that it was voluntarily reduced in 1932 to 4.50 per cent, and to 4.18 per cent in 1933, thus tending to show final absorption of the deficiency in the depreciation reserve during the year 1931.

After digesting the mass of evidence presented to it on the question of depreciation, the ultimate function of the commission was to fix a composite rate to be applied annu- [fol. 895] ally from the year 1925 to maintain a proper depreciation reserve.

It is to be remembered that the commission did not challenge the charges of the company for maintenance and repairs, which were generous, or any depreciation expense except the major item relating to telephone plant and equipment. Neither did it disturb the depreciation expense charged between September 21, 1921, and the year 1925, which was found to be excessive. The future was its concern in the light of what had transpired in the past.

Proceeding to fix the annual composite rate for depreciation expense, effective from 1925, the commission found that

from the date of merger to the date certain the company annually charged as depreciation expense an average composite rate of 5.50 per cent, and that its net charges to reserve for depreciation during the same time were equal to an annual composite rate of 3.74 per cent.

Taking into consideration the substantial sums spent by the company in the years preceding and following the date certain for maintenance and repairs, and that the depreciable property of the company was in a good, improved and up-to-date condition as of June 30, 1925, the commission decided that a composite rate of 4 per cent was just and fair to provide for annual statutory depreciation, and that it should be applied from 1925 forward.

It appears in the case of Michigan Public Utilities Commission v. Michigan State Telephone Co., 228 Mich., 658, 200 N. W., 749, that the commission had fixed a rate of depreciation at four per cent of the total fair value of the company's depreciable property. The Supreme Court of Michigan in upholding such action said:

"Probably in a majority of the cases a higher rate has been sustained. But this is a question of fact depending largely upon the character, nature and age of the property [fol. 896] in question, and illuminated somewhat by the experience of the company respecting the subject. And it must not be overlooked that, as the cases show, many minor replacements, and repairs and maintenance are made and charged to operating expense. In practice, this contributes considerably toward keeping the property intact. The commission in its opinion * * * reviews the question at length, and states fully the experience of the company respecting the rate of depreciation and the accumulation of the fund. The rate fixed is comparatively low, but, in the light of the facts of this case, we must decline to hold it confiscatory."

As authority for the proposition that the past experience of a public utility affords a tenable foundation upon which to establish the rate that should be allowed in the future for annual depreciation, the commission relied on the case of Smith v. Illinois Bell Telephone Co., supra.

The value of the company's depreciable property having been fixed at $84,330,894 as of the date certain, the amount allowed for depreciation expense for the year 1925 at 4 per

cent was $3,373,236. The commission further prescribed that depreciation expense for subsequent years should be based on the determined value of the depreciable property at the date certain plus net additions thereto. Consequently, from the years 1925 to 1933, inclusive, the depreciation allowance to the company under the commission's order amounted to $45,266,614, being some $17,267,353 less than claimed by the company upon higher composite rates and higher valuation, which it contends are reasonable.

Naturally, the company registers vigorous protest to the methods pursued by the commission, arguing that it had no right to rest its calculations on the period preceding the date certain, disregarding the actual retirement losses of the company during the time for which refunds were [fol. 897] ordered. The company earnestly maintains that its actual realized retirement losses from 1925 to 1933, inclusive, were $8,364,256, and that its true expense of depreciation during such time was some $16,000,000, which no one disputes, and that they have been entirely ignored through the erroneous course adopted by the commission; to which the commission replies that if the company had commenced business with a proper depreciation reserve of $14,638,870 instead of $6,219,829, and if certain properties acquired since September 21, 1921, had had reasonable depreciation reserves, the company would have had an ample reserve on December 31, 1933, of $14,652,468.

The conflict between the company and the commission is apparent. The former insists that computations should be confined to the period between 1925 and 1933, while the latter has seen fit to extend its inquiry to the beginning of the company's existence.

"Depreciation" is inherently a complex subject. It becomes more so when the particular enterprise under consideration is of great magnitude and millions of dollars are involved. In weighing and dissecting the evidence, a knowledge of law plays a minor part. One attempting a comprehensive grasp of the intricacies presented should be both a skilled engineer and a competent accountant, versed in the problems peculiar to the public utilities field.

We have made a conscientious examination of the voluminous evidence relating to "depreciation" and have analyzed it to the best of our ability with regard to the conflicting contentions of the adverse parties. There being sub-

stantial support for the findings and order of the commission on this feature of the case, they will be permitted to stand.

Rate of Return

The company complains that the rate of return allowed by the commission is inadequate and confiscatory. The [fol. 898] rates of return allowed by the commission are as follows: 7 per cent for the years 1925 to 1929, inclusive; 6½ per cent for each of the years 1930 and 1931; and 5½ per cent for each of the years 1932 and 1933. These rates they find and declare were ample in the light of the economic conditions existing during the periods involved. A rather recent case dealing with this question is that of Illinois Bell Telephone Co. v. Gilbert, 3 F. Supp., 595, in which there is a discussion of the question quite timely and appropriate to the case before us. From that case we quote the following:

"A public utility enjoying the advantages of plaintiff is not entitled to the large earnings made by many undertakings during periods of great prosperity. On the other hand, its return in times of business adversity should not be reduced to the extent that the earnings of many private corporations have been impaired. The range of from 7½ per cent to 5½ per cent as found in this case gives weight, in our opinion, to all of the elements which under the ruling of the Supreme Court we are required to consider."

The court took judicial notice of the general decline in corporate earnings during the years 1931 and 1932 and said: "It is for this reason that we have fixed 6½ per cent as the proper rate of return for 1931 and 5½ per cent as the proper rate of return for 1932."

In Dayton P. & L. Co. v. Public Utilities Commission, supra, the Supreme Court of the United States, on page 311, in approving as adequate a rate of return of 6½ per cent, said: "In view of business conditions, of which we take judicial notice (Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, 260), the rate allowed was adequate."

A rate of return deemed reasonable under generally prevailing normal economic conditions may be excessive in a period of economic depression, and a rate of return deemed

reasonable in a period of depression may be wholly inade- [fol. 899] quate and confiscatory in a period of general prosperity. That a general economic depression prevailed during the years here considered requires no proof, and this court will, even as the Supreme Court of the United States did (supra), take judicial notice of that fact. The fact that the prevailing economic depression is reflected in a reduction in the rate of the return allowed to a utility does not necessarily render the rate of return allowed confiscatory where the reduction made is reasonable in the light of prevailing conditions.

Another recent case in point, decided in February, 1925, is Chesapeake & Potomac Telephone Co. v. Whitman, 3 F. (2d), 938, wherein the court approved a 6 per cent return on the value of the telephone company property, and held that since the telephone company was an integral part of a nation-wide system and was assisted in its financing by the corporation controlling it, the rate of return allowed was not confiscatory. The court, on page 954, said: "• • • If the present company stood alone, either in the sense that it had, unaided, to look after its own financing, or that it did not form what is in reality an integral part of a nation-wide system we might well doubt whether a return of 6 per cent would be sufficient to enable it to raise the money necessary to its growth, and therefore, it may be, to its life; but such is not the case. It is owned and altogether controlled by the American Telephone & Telegraph Company, hereinafter styled the National company. In partial return for a substantial annual sum paid by it to the National company, the latter has agreed to assist it in its financing. • • • All that we hold is that, if the company be allowed as much as 6 per cent, its property has not been confiscated. • • •"

In the instant case, the commission, in its opinion, finds that the company "enjoys a virtual monopoly in the territory in which it operates; its business constitutes one of the [fol. 900] most substantial and profitable utility businesses in the state; its properties are favorably located in serving many of the large and thriving communities of Ohio; its management is of a high grade of efficiency; its financial position, because of its subsidiary character, is of a very high order, and it has been able by reason thereof to secure

funds for its additions and betterments without going into the open market for money and there is no indication that it will be required to enter the public market for finances in the immediate future. It may be said the element of risk to the investor as applied to this company is negligible."

In Smith v. Illinois Bell Telephone Co., supra, the court, on pages 160, 161, said: "* * * In determining what is a confiscatory regulation of rates, it is necessary to consider the actual effect of the rates imposed in the light of the utility's situation, its requirements and opportunities. As was said in United Railways v. West, 280 U. S. 234, 249, 250 [74 L. Ed. 390, 408, 50 S. Ct. 123], a rule as to the rate of return can not be laid down which would apply uniformly to all sorts of utilities; 'what may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk.' In that case the court restated the general rule in the language of the opinion in Bluefield [Water Works & Improvement Co.] v. Public Service Commission, 262 U. S. 679, 692, 693 [67 L. Ed. 1176, 1182, 1183, 43 S. Ct. 675], as follows: 'What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are [fol. 901] attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

"It is evident that in the present case we are not dealing with an ordinary public utility company, but with one that is part of a large system organized for the purpose of maintaining the credit of the constituent companies and securing their efficient and economical management."

In the case of Wabash Valley Electric Co. v. Young, 287

U. S., 488, 77 L. Ed., 447, 53 S. Ct., 234, the court held that a rate of return of 7 per cent for a public utility company supplying electricity would not be deemed so inadequate as to amount to a taking of property without due process because after taking care of debts and dividends there might be nothing left for surplus, where it appeared that the company had a surplus equal to nearly 28 per cent of its total stock and funded debt liability, and the fact that it was a subsidiary of a company by which its stock and securities were owned, and which also owned and financed other similar companies, made it reasonable to conclude that it was in a more favorable financial situation than if it were a disconnected enterprise.

From a consideration of these authoritative decisions, it must be concluded that the rate of return allowed by the commission is fair and just and hence should not be disturbed.

Upon the entire record we are of opinion that the findings and conclusion of the Public Utilities Commission of [fol. 902] the state are neither unlawful nor unreasonable. Its order is therefore in all respects affirmed.

Order affirmed.

Weygandt, C. J., Stephenson, Williams, Matthias, Day and Zimmerman, JJ., concur.

Jones, J., not participating.

Reporter's certificate to foregoing paper omitted in printing.

[fol. 903] [File endorsement omitted]

[fol. 904] IN SUPREME COURT OF OHIO

[Title omitted]

Consolidated Cause No. 25065

(Constituent Causes Nos. 24694, 24695, 25023 and 25065

APPLICATION OF THE OHIO BELL TELEPHONE COMPANY FOR REHEARING—Filed August 3, 1936

To the Honorable the Supreme Court of Ohio:

The Ohio Bell Telephone Company, plaintiff in error in the above entitled cause, being a consolidated cause into

which by the order of this Court of October 31, 1934, there were consolidated Causes Numbers 24694, 24695, 25023 and 25065, hereby applies for a rehearing thereof.

[fol. 905] Summary of Reasons Advanced in Support of Application

1. The decision (rendered July 22, 1936) discloses that in respect of the issue of the expense of depreciation, the court misconceived the basis of the Commission's findings, and believed, contrary to the fact, that the Commission's orders in that respect were based upon a finding that when plaintiff in error commenced business in 1921 its reserve for depreciation was inadequate and that, consequently, its subsequent retirement expense was abnormally high. No such issue was ever in the case. The Commission made no such finding. Plaintiff in error was never called upon to meet such a claim.

2. The decision, insofar as it affirms the Commission's orders relative to property values and refunds for the years 1926 to 1932, inclusive, arrived at by the use of price trends, wholly disregards and is directly contrary to the decisions of this Court and of the United States Supreme Court hereinafter set forth. Attention is called to the decision (infra) of the United States Supreme Court in West v. Telephone Co., decided June 3, 1935, after the case at bar had been argued.

3. The decision omits to pass upon major issues, hereinafter listed, duly presented by the record, briefed, argued, and essential to a determination of the lawfulness of the Commission's orders in this cause.

4. The decision not only deprives plaintiff in error of its property without due process of law and denies it the equal protection of the laws, contrary to the 14th Amendment to the Constitution of the United States in all respects hereto-

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Note.—No reargument of the case being permitted in this application for rehearing, plaintiff in error submits the application without discussing the several assignments of error presented by the petition in error, all of which plaintiff in error would expect to reargue should the application be granted.

fore presented in this consolidated cause, and now hereby [fol. 906] reasserted, but also in that, by repeatedly accepting the Commission's findings as conclusive if supported by any evidence, the Court failed to accord plaintiff in error that full judicial review required in cases such as this, by the Constitution of the United States as interpreted by the Supreme Court.

Statement of Reasons

1. Expense of Depreciation

The Court decided this important issue upon a basis never considered by the Commission, unsupported by any evidence, and originating solely in the brief of counsel for the Commission.

The Commission, disregarding the unchallenged evidence as to plaintiff in error's expense of depreciation, purported to base its annual allowances in that respect upon plaintiff in error's actual retirement experience. If, in so doing, it had used plaintiff in error's retirement experience for the years in controversy, during which period, the cost to plaintiff in error of property retired exceeded the Commission's allowance for depreciation by $8,364,256, the aggregate allowance would necessarily have been larger by a comparable amount, and the refunds reduced accordingly. Instead, the Commission used plaintiff in error's retirement experience for the four-year period preceding June 30, 1925, when plaintiff in error's plant was not experiencing the rapid growth and corresponding retirements of the period in controversy.

Apparently appreciating that there was in the Commission's findings no answer to plaintiff in error's contention, that, if limited to its actual retirements, the depreciation expense should at least be determined in the light of its experience during the years in controversy, the Commis- [fol. 907] sion's brief presented a theory, unsupported by the record, never theretofore suggested, but now adopted by the Court in the erroneous belief that it represents the Commission's ruling.

The theory of that brief is that the Commission considered plaintiff in error's expense of depreciation to have been abnormally large in order to replenish an inadequate depreciation reserve with which plaintiff in error com-

menced business. The claimed factual basis is that in 1921, when plaintiff in error came into existence, it acquired, by consolidation, telephone properties having a depreciated value of $69,070,160. The depreciation reserve taken over by plaintiff in error at that time was $6,219,829. Instead of this amount, the claim is that the existing depreciation in the acquired properties required a reserve of $14,638,870.

This figure is arrived at in the Commission's brief, page 103, by deducting a "computed" present value as of September 21, 1921, of $70,369,922 from a "computed" reproduction value as of the same date of $85,008,792. These assumed values are arrived at by deducting from the reproduction and present values, respectively, found by the Commission as of June 30, 1925, the net additions made between that date and September 21, 1921. By deducting the actual reserve of $6,219,829 from the alleged requisite reserve of $14,638,870, there is produced the figure of $8,419,041, by which amount it is said the reserve in 1921 was inadequate.

The argument was presented as if the Commission had based its expense of depreciation thereon. The court's affirmance rests upon the adoption of that argument. One would believe from the Commission's brief, p. 103, that the Commission made these calculations and so arrived at its allowances for the expense of depreciation. Indeed at page [fol. 908] 125 of the brief there appears a table, emphasizing the same argument, which one would believe was prepared by the Commission and contained in its findings. But nowhere in the record can there be found any such tabulation.

The findings of the Commission and its opinion nowhere suggest that the Commission entered into any such course of reasoning.

The Commission never suggested that the depreciation reserve in 1921 was too low by the sum of $8,400,000, or any other sum; nor that plaintiff in error's expense of depreciation had been increased upon that account.

The Commission never suggested that plaintiff in error's expense of depreciation was "abnormal" at any time or for any reason.

The Commission never considered the subject of the adequacy of the reserve as it existed at the time of the consolidation in 1921. In point of fact, the consolidation of

the telephone plants in 1921 was approved by the Commission, and the properties entered upon plaintiff in error's books accordingly. (Eide Ex. 1.)

Neither the Commission nor any one else in the case ever did any of these things.

The opinion here clearly discloses that the Court believed that the theory advanced by the brief was the Commission's finding. The Court said:

"From evidence presented *the Commission found* that at the date of merger the company's property was actually in a per cent condition approximating 83 per cent, which required a depreciation reserve of $14,638,870.00, but that with depreciable fixed capital of $69,049,424, a depreciation reserve of only $6,219,829 was supplied, according the property an erroneous per cent condition of about 91 per cent." (Emphasis ours.)

[fol. 909] In point of fact the Commission made no finding involving any one of the three figures or either of the two percentages mentioned.

Again:

"Obviously, this presented an extraordinary situation and suggested to the Commission that the charges to depreciation reserve during the initial years of the company's existence were in excess of the inadequate amount furnished for depreciation at the date of merger," * * *"

In point of fact it suggested no such thing to the Commission, because, throughout the proceedings before the Commission, the subject matter was unheard of.

Still again:

"In support of this conclusion, the Commission engaged in an elaborate set of calculations covering the period from September 21, 1921, through 1933, included in its brief in tabulated form." (This refers to the table upon page 125 of the Commission's brief.)

In point of fact the Commission did not at any point in the record, engage in this elaborate set of calculations. It never prepared that or any other similar table.

And still again:

"Upon computations extending through 1933 the commission found that the total charges against the reserve for

depreciation were $59,339,088, of which $38,270,252 was covered by the additions to the reserve since September 21, 1921, $6,219,829 was covered by the reserve in existence as of September 21, 1921 and $14,849,007 was representative of the amount of realized depreciation in excess of the credits which had been made to the depreciation reserve on the assets replaced."

[fol. 910] All these figures come from the calculation to be found on page 125 of the Commission's brief. None of them is or ever was contained in any finding of the Commission.

There is not in the record one syllable of evidence tending to show that plaintiff in error's rates of depreciation were based upon anything other than proven experience together with an informed forecast as to retirements to take place; nor is there any evidence in the record tending to show that expense of depreciation has been charged by plaintiff in error for the purpose of making up an inadequacy in the depreciation reserve existing at the time of consolidation in 1921, or at any other time.

In conclusion on this point:

1. This issue was decided by the Court upon a claim, never considered or adopted by the Commission, but originated in its counsel's brief.

2. This Court has accepted the claim so made in the brief. Plaintiff in error has had no opportunity to meet the alleged facts upon which the claim is based.

3. Plaintiff in error proved by competent witnesses the rates of depreciation, by the application of which its expense of depreciation was arrived at.

4. These rates the Commission's engineer approved in their entirety. (R. p. 2199.)

5. Throughout the case no witness disapproved or in any respect criticised them. Plaintiff in error had therefore made its case in this respect.

6. Refusing to follow the evidence, the Commission, in its findings of January 16, 1934, purported to measure the expense of depreciation by actual property retirements. [fol. 911] In point of fact it allowed $8,364,256 less than that expense.

7. This is sought to be justified by the claim that excessive depreciation expense had been charged in the years 1925 to 1933, in order to build up depreciation reserves inadequate in 1921. But there was no evidence of inadequate reserves in 1921; no evidence of abnormal retirements since then; and no suggestion of either of these in the Commission's findings and order or elsewhere in the record.

8. In that state of the record the Commission's disallowance of the expense so proven denied plaintiff in error a fair trial. Ohio Utilities v. Commission, 267 U. S. 359. There the United States Supreme Court in reversing the judgment of this Court which had affirmed an order of the Ohio Commission, because of its refusal to be bound by the evidence, including that of its engineer, said:

"From the foregoing it is evident that the state supreme court did not accord to the plaintiff in error that sort of judicial inquiry to which, under the decisions of this Court, it was entitled. Bluefield Water Works & Improvement v. Public Service Commission, supra; Ohio Valley Water Works v. Avon, 253 U. S. 287, 289."

9. That being so, the decision of this Court, affirming the Commission's order as to expense of depreciation, was clearly erroneous.

In West Ohio Gas Co. v. Commission, 294 U. S. 63, 79, the United States Supreme Court, in reversing the judgment of this Court, which had affirmed an order of the Commission, said—

"Without anything to suggest that there was such an issue in the case the Commission struck off 2%; it might, [fol. 912] with as much reason, have struck off 4 or 6. This was wholly arbitrary • • •. Under the statutes of Ohio no provision is made for a review of the order of the Commission by a separate or independent suit. The sole method of review is by a petition in error to the Ohio Supreme Court which considers both the law and the facts. • • • To make such review adequate the record must exhibit in some way the facts relied upon by the Court to repel unimpeached evidence submitted for the company. If that were not so, a complainant would be helpless, for the inference would always be possible that the Court and

the Commission had drawn upon undisclosed sources of information unavailable to others. A hearing is not judicial at least in any adequate sense, unless the evidence can be known."

10. In justification of its action in basing the expense of depreciation upon plaintiff in error's retirement experience during the years antedating June 30, 1925, the Commission cites the decision of Smith v. Illinois Bell Telephone Company, 282 U. S. 133, where it is said that:

"The experience of the * * * company * * * should afford a sound basis for judgment as to the amount which, in fairness both to the public and private interests, should be allowed as an annual charge for depreciation."

This Court cites the same case to the same effect.

The Commission's findings, including its allowance for the expense of depreciation, were made in January, 1934. Measured by the decision in that case the Commission, therefore, should have taken into account the experience of the company during the period covered by the investigation. Instead, the Commission deliberately disregarded the experience of that period, and took as "the experience of the company" for the purpose of this case its experience during an antecedent period.

[fol. 913] Obviously the Commission's only purpose in basing its allowance on the company's experience during that antecedent period was to find a means for disregarding plaintiff in error's experience during the period under investigation and thereby to increase the amount of the refunds accordingly.

Certainly the Smith case, means that the experience most nearly related in point of time to the period of inquiry cannot be disregarded—and that experience the Commission ignored in the present case.

2. Values Fixed and Refunds Ordered Based Upon Undisclosed Price Trends

The Commission's findings of value for 1926 and each subsequent year were based upon price trend information not in evidence or otherwise known to plaintiff in error. The Commission denied plaintiff in error's repeated written requests for opportunity to examine and rebut this informa-

tion. The refunds for 1926 and subsequent years amounted to more than $10,000,000. They depended upon the property values and net income found by the Commission for 1926 and subsequent years. Plaintiff in error was thus ordered to refund more than $10,000,000 without any hearing.

The decision of the Court affirms this action of the Commission, the only ground advanced for so doing being, in substance, that judicial notice could properly be taken of changes in values taking place while the case was pending before the Commission and the Court. Throughout its discussion the Court makes no mention of its former decision in Lindsey v. Commission, 111 O. S. 6, where, in respect of reports of the Commission's engineers, not offered in evidence, the Court said—

[fol. 914] "The plaintiffs in error, however, were entitled to examine such report of the engineers and to cross-examine such engineers upon any or all matters contained in such report. The report, being in the nature of evidence in the case, is, like any other evidence, subject to analysis and impeachment, and had an application to examine the report been made and refused, or an application been made to cross-examine the engineers and refused, this court would regard such refusal as reversible error."

Thus the decision of this Court in the Lindsey case compels a reversal of the Commission's order.

So, in the instant case, the Commission availed itself of information not made a part of the record and in respect of which applications to examine and cross examine were repeatedly made by plaintiff in error and refused by the Commission. Measured by the foregoing decision of this Court, the Commission's refusal of plaintiff in error's applications to examine the information used by the Commission and to cross examine with respect to it, was clearly erroneous and denied plaintiff in error due process.

Another case originating in Ohio, of which the Court makes no mention, is that of West Ohio Gas Company v. the Commission, 294 U. S. 63, 79, wherein the United States Supreme Court reversed an order of the Ohio Commission. There the Commission had made one of the company's annual reports a part of the record without affording the company an opportunity to explain or analyze it. This the

Supreme Court of the United States held to be error. And, of course, the denial of due process in the present case is far more flagrant than in the West Ohio Gas case, because there the company presumably knew the contents of its own reports, whereas in the present case plaintiff in error has [fol. 915] never known what information the Commission used in arriving at its price trend percentages.

Plaintiff in error is not unmindful of the rule that, within limitations, a Court or Commission may take judicial notice of changes in conditions. The authorities cited by the Court to this effect represent undoubted law, but none of them, or any other case so far as plaintiff in error knows, holds that a Court or Commission may evaluate those changes without evidence thereof and the right to cross examine with respect thereto. Surely no such right as that attempted to be exercised by the Commission exists. That much is settled by I. C. C. v. L. & N. R. R. Co., 227 U. S. 88 and other cases cited at page 22 of plaintiff in error's principal brief. See also U. S. v. Rio Grande, Etc., Co., 174 U. S. 690. The law of judicial notice is based upon common knowledge. While it is common knowledge that since 1926, prices have undergone material changes, the extent thereof cannot lawfully be measured without evidence.

In conclusion on this point, substantially the same kind of price trend method as that used by the Ohio Commission in arriving at values for 1926 to 1933, inclusive, was condemned by the United States Supreme Court in the case of West v. Telephone Co., 295 U. S. 662 (June 3, 1935), first, because the method was arbitrary in that public utility property cannot be evaluated by a formula or a "translator" obtained by the use of price trend indices; and, second, because the method was employed by the Commission "upon a principle known only to itself." (Quotations are from the court's opinion.)

Both of these objections, either of which is fatal, apply with like force to the Ohio Commission's findings. Not only do the findings attempt to fix values by formula, but all evidence with respect to the formula has been withheld, not- [fol. 916] withstanding plaintiff in error's repeated requests for its disclosure. The court will search in vain for anything in this decision of the Supreme Court of the United States showing or tending to show that property

values may be determined as a matter of "judicial notice" instead of by competent evidence.*

3. Issues Not Passed Upon

(a) Separate Consideration of Rates Increased Under Bond

Entirely apart from the Commission's findings of property values, expenses, rate of return, and aggregate excess earnings, it was essential to decide whether plaintiff in error was entitled to a separate consideration of the reasonableness of the several rates increased under bond pursuant to the Robinson and Pence Laws; and whether the Commission, having denied such separate consideration, had the right to employ as an alternative expedient the accounting apportionments which it used. This entire subject matter, fully argued in plaintiff in error's principal brief at pages 13, and 25 to 29, its reply brief at page 8 and the Commission's brief at page 180, the court has omitted to decide. The only reference to the question is in the statement of facts where it is said:

"With the mechanics governing the proper distribution of the refunder herein, this court at this time has nothing to do."

It is submitted that the subject was one with which the court should have had much to do. Unless the allocation [fol. 917] method adopted is proper, the refund orders must fall in their entirety. If the quoted statement means that the court regarded this case as one in which a person, owing an ascertained sum of money to a group of others, is not concerned with the proportions of the recipients, then the court plainly erred. This is because the first purpose of the apportionments was to determine how much of the total alleged excess earnings came from the bonded rates, no other earnings being refundable in any aspect of the case. A separate consideration of the several bonded rates

* The denial of due process in this respect is the more evident, when it is considered that the Ohio Commission sought to justify its trended values by the trend developed by the Maryland Commission. (Ex. D, Petition in Error, p. 77.)

might well disclose that none of the excess earnings was the fruit of bonded rates, in which event no refunds could lawfully be ordered; or such separate determination might result in refunds ranging from nothing up to thirteen million dollars.

Under these circumstances, the court's failure to pass upon plaintiff in error's right to a separate consideration of the bond cases is tantamount to ordering the refunds without any determination that one dollar of excess earnings came to plaintiff in error from the collection of the bonded rates.

If a rehearing shall be granted in order to afford the court an opportunity to pass upon this important question, we submit that the Court will regard the terms of the Pence and Robinson Laws and its own decision in the case of Columbus Gas and Fuel Co. v. Commission, 127 O. S., 109, as controlling, and as imperatively requiring a separate consideration of the bond cases. It was there held that the unit established by the Constitution of Ohio, (e.g. Article 18, Sections 4 and 5) "for dealing with public utility service is the municipality." This decision is in accord with the ruling of the United States Supreme Court in the case of Wabash Valley Electric Company v. Young, 287 U. S., 488.

[fol. 918] (b) Rates for 1934 and Thereafter

The Court wholly failed to give consideration to plaintiff in error's rates for 1934 and thereafter. Plaintiff in error's position is that since, as found by the Commission, plaintiff in error had earned for 1933 no more than a fair return measured by the Commission's findings of value, expenses and rate of return, the Commission was required to terminate the case by approving the 1933 rates as presently and prospectively in force until appropriately changed by law.

The fixing of rates to be charged by plaintiff in error at and following the close of the investigation was one of the principal purposes of the case before the Commission, whose duty it was to fix those rates. Plaintiff in error is entitled to have that duty performed; and, since the Commission, by its finding for 1933, has in effect found its rates reasonable, to have those rates approved.

(c) Excluded Real Estate

Plaintiff in error has shown that the Commission excluded from the rate base as of June 30, 1925 ten parcels of real estate of the approximate value of $650,000 then owned by plaintiff in error and useful in rendering intrastate service within the purview of the State and Federal decisions referred to at pages 43 and 44 of plaintiff in error's principal brief. These excluded parcels had been acquired for definite use and on most of them telephone buildings were in process of construction on June 30, 1925. The failure of the Commission to allow for this real estate in the rate base as of that date was error requiring the reversal of this cause, yet this Court wholly failed to consider the correctness of the Commission's decision or, if it [fol. 919] believed the Commission to be correct, to state the grounds upon which this case can be differentiated from the controlling authorities, cited in plaintiff in error's brief.

(d) Going Value

The Court wholly failed to consider or discuss in its opinion whether plaintiff in error is entitled to an allowance for going value in the rate base. The question is presented at pages 50 et seq. and 87 et seq. of plaintiff in error's principal and reply briefs, respectively.

The Commission in its tentative finding of 1931 found that such value existed in the amount of $3,500,000. It never receded from that finding. The final finding of value of January 16, 1934 eliminated this separate allowance for going value, intimating that an allowance therefor was hidden somewhere in the overheads and saying that no separate allowance was required. In this case it can not be successfully claimed that going value has been allowed for anywhere in the valuation. This is because in the findings of final value the Commission eliminated or reduced several allowances made in its finding of tentative value, and increased none. All the valuation witnesses testified that nowhere in their costs, whether direct or indirect (overheads) was there any amount or allowance for the element of going value. The condition of the record therefore is that the Commission has found on substantial testimony, first, the existence of going value, and second, the amount

thereof. But plaintiff in error has received no benefit thereof in the valuation.

[fol. 920] 4. Due Process

The Supreme Court of the United States has repeatedly held that it is the duty of a court directly reviewing legislative or administrative action to consider the evidence in such manner as to afford an independent judicial review. Such a review is not afforded where the court, instead of weighing the evidence, treats the administrative findings as conclusive if supported by any evidence. St. Joseph Stock Yards v. U. S., Supreme Court of United States, decided April 27, 1936, 80 L. Ed. 679; Ohio Valley Water Company v. Ben Avon, 253 U. S. 287, 289; Prendergast v. New York Telephone Co., 262 U. S. 43, 50; Bluefield Co. v. Public Service Commission, 262 U. S. 679, 689.

The Court's opinion in the instant case discloses that it has treated the Commission's findings of fact as conclusive whenever supported by any evidence.

It was the duty of the Court to appraise the testimony. Plaintiff in error had a constitutional right to a judicial appraisal, which cannot be satisfied by mere deference to the Commission's findings.

As shown by the authorities cited above, there is a fundamental difference between the character of factual review required by the Constitution in a case such as this and the review ordinarily afforded by a reviewing court to findings of fact in a trial court. In the latter case, findings of fact are not disturbed if supported by substantial evidence. Such is not the rule in the case of a review of administrative findings. Here, it is quite evident that the Court treated the findings of the Commission as a reviewing court ordinarily treats the findings of a trial court. The approach having been erroneous, the error is not cured because the [fol. 921] Court has, as stated in the opinion, given consideration to the evidence. It gave that consideration, not for the purpose of determining where lay the weight, but of determining whether any evidence was to be found in support of the Commission's findings.

This would have been quite proper in any case except one in which the Constitution requires the Court to weigh the evidence, as here, where in this Court, plaintiff in error had its first day in court. It is for this reason that it was

entitled to the independent judicial determination guaranteed by the Constitution.

Respectfully submitted, Karl E. Burr, W. H. Thompson, W. B. Stewart, Ashley M. Van Duzer, Attorneys for The Ohio Bell Telephone Company.

August 3, 1936.

[fol. 922] IN THE SUPREME COURT OF OHIO

No. 24694, No. 25023, No. 25065

THE OHIO BELL TELEPHONE COMPANY, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error,

and

No. 25076

THE CITY OF CLEVELAND, OHIO, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error

Being Before

THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination: (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange; (b) of the Just and Reasonable Rates, and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

[fol. 923] CERTIFICATE OF TRANSMITTAL—Filed January 24, 1935

To The Clerk of the Supreme Court of Ohio:

The undersigned, The Public Utilities Commission of Ohio, by E. J. Hopple, its duly appointed, qualified and act-

ing Chairman, and by Clarence H. Knisely, its duly appointed, qualified and acting Secretary, the said Clarence H. Knisely being the person in whose custody are all books, records, maps, documents, files, proceedings and papers of said Commission and who has been duly authorized and directed by said Commission in the premises, does herewith transmit to the Clerk of the Supreme Court of the State of Ohio in the case of The Ohio Bell Telephone Company, plaintiff in error, vs. The Public Utilities Commission of Ohio, defendant in error, consolidated Cause No. 25065 (constituent causes Nos. 24694, 24695, 25023 and 25065), and in the case of The City of Cleveland, Plaintiff in Error, vs. The Public Utilities Commission of Ohio, Defendant in Error, No. 25076, and does hereby certify that the within and attached constitute a true and complete transcript of all of the docket and journal entries, orders and proceedings, and all original papers and pleadings and a true and correct transcript of all evidence, together with all of the exhibits, files and proceedings, adduced upon the hearings before the Commission in the proceedings (complained of in said causes in the Supreme Court of Ohio) entitled:

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

and in all of the proceedings consolidated with said proceedings No. 3307.

[fol. 924] All evidence, testimony, exhibits, abstracts, responses to requests, statements, reports, correspondence, memoranda, schedules, briefs, miscellaneous data, protests, proofs of publication, bonds, appraisals, files (including proofs of publication, bonds, tariffs and all other papers) and all other documents and data pertaining to the foregoing causes and each of them, are either bound herewith or contained in boxes attached hereto, lettered A to K in

clusive, bearing said case number 3307, followed by a description of the contents of each box respectively, and identified by the signature of the Secretary of the Commission and with the seal of the Commission attached.

Done and certified at Columbus, Ohio, this 3rd day of January, 1935.

The Public Utilities Commission of Ohio, by E. J. Hopple, Chairman; Clarence H. Knisley, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 925] [File endorsement omitted]

IN SUPREME COURT OF OHIO

No. 24694, No. 24695, No. 25023, No. 25065

No. 25076

[Titles omitted]

ORDER TRANSMITTING PAPERS—Filed January 24, 1935

The Ohio Bell Telephone Company and the City of Cleveland, Ohio, having appealed from the findings and orders of The Public Utilities Commission of Ohio in proceeding No. 3307, being

In the matter of the investigation and inquiry of The Public Utilities Commission of Ohio, upon its own motion, for the determination: (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and Exchange; (b) of the just and reasonable rates, and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio

it is hereby

Ordered, That the original filings and papers, the resolutions, journal and other entries and orders of the Commission, a true, complete and certified transcript of all the proceedings and evidence adduced upon the hearings before the Commission, together with all exhibits, and a true and

complete transcript of the docket entries; all as filed in proceeding No. 3307 and in all other proceedings consolidated therein, be transmitted forthwith to the Clerk of the Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 23rd day of January, 1935. —— ——, Secretary. (Seal.)

[fol. 926] Before Public Utilities Commission of Ohio

Docket Entries

No. 3307

In the Matter of the Investigation and Inquiry of The Public Utilities Commission of Ohio, Upon Its Own Motion, for the Determination (a) of the Fair Value of the Property of The Ohio Bell Telephone Company, Toll and Exchange, (b) of the Just and Reasonable Rates and (c) of Reasonable Rules and Regulations for Services Furnished by Said Company to Its Patrons Throughout the State of Ohio

Filed October 14, 1924

Investigation by the Commission of The Ohio Bell Telephone Company Property in Ohio Used in Toll and Exchange (a) Fair Value of Property, (b) Just and Reasonable Rates, (c) Reasonable Rules and Regulations for Service to Patrons Throughout the State of Ohio

December 1, 1924. Filed Company State Wide Inventory Vol. I and II, Ohio Bell Telephone Company.

December 15, 1924. Informal conference with legal officers of many municipalities of the State of Ohio and counsel Ohio Bell Telephone Company, and by agreement of such counsel, cause assigned for hearing, Monday, January 19, 1925, at twelve-thirty o'clock p. m., CST Hearing Room. Notice given.

January 19-20-21, 1925. Sessions of hearing; hearing adjourned to Tuesday, March 10, 1925, at nine o'clock A. M. CST. Exhibits filed: Company-Williams: 1—Map show-

ing exchanges and equipment; 2—Map of Toll Routes; 3a, Vol. I and 3b, Vol. II, Company Wide Inventory (heretofore filed). 4—Field, Pole and Wire Listing Forms. City-Schneider, 1-38, inclusive, Report Forms, one volume.

February 10, 1925. Filed Transcript Proceedings and Testimony hearing of January 19, 20 and 21, 1925. 277 pages.

March 10, 1925. Further hearing held.

March 28, 1925. Filed transcript Proceedings and Testimony taken March 10, 1925, 132 p.

November 19, 1925. Entry assigning investigation for further hearing for presentation by The Ohio Bell Telephone Company of new inventory and appraisal of its property, for Tuesday, December 22, 1925, at nine o'clock A. M. CST, Hearing Room. Copy served upon Mayors and Solicitors upon Municipalities and *and* unincorporated villages wherein said company operates and noting appointment of Messrs. McConnaughey and Postle, Special Counsel and Wm. J. Hagenah, Special Engineer.

[fol. 927] December 22, 1925. Further hearing held. Exhibits filed by The Ohio Bell Telephone Company: Williams: 5-a, State Wide Inventory, Vol. 1; 5-B, Vol. 2; 5-C, Col. 3; 5-D—to be supplied (supplied Ja. 11, 1926); 6—Appraisal Real Estate; 6-A, to be supplied (supplied Jan. 11, 1926 hearing); Myers 1—Appraisal Buildings; 2—Sheets 1-5 inclusive, Akron Building No. 1. Hearing recessed to January 12, 1926, 9 A. M., C. S. T. and following dates reserved for further sessions, 1926—January 13, 27, 28, 29; February 10, 11, 25, 26; March 16, 17, 30 and 31.

January 8, 1926. Filed transcript Proceedings and Testimony in hearing December 22, 1925. 69 p.

January 11 & 12, 1926. Sessions of hearing. Exhibits filed, The Ohio Bell Telephone Company: Williams 5-D, Statement corresponding Page Numbers in Williams Exhibit 3-A & B and 5 A, B and C; 6-A, Land—Affidavit Number in Williams Exhibit 6, Page and Parcel Number in Williams Exhibit 5-A; 7-A, Vol. 1, Company Wide Appraisal; 7-B Vol. 2, same; 7-C, Vol. 3, same; 8—Net Additions to General Equipment November 1, 1924 June 30, 1925.

January 27, 8 & 9, 1926. Sessions of hearing; Exhibits filed: Company: A—Copy of Ohio Senate Joint Resolution No. 24-109 O. L. 629; Williams: 9-10, Summary of Appraisal—Property to be disposed of; 11—To be furnished

(See 2-10-26); 12—Equated Per Cent Condition; Hirsch: 1—Study of Annual Carrying Charges, etc.; Stephens: 1—To be furnished; 2—Map, 1—showing Exchanges, 2—Equipment and no. exchanges; 3—Map, Toll Routes; 4—Buildings; 5—Equated Per Cent Condition of Property; Myers: 3—Comparison, Reproduction Cost New June 30, 1925; and Present Condition, 4 sheets; Uprichard: 2—Book Cost, Fixed Capital and construction work in progress; 3—Gross and Net Addition-Fixed Capital W. I. P.; 4—Capital Stock and Long Term Debt; 5—Number of Employes; 1—Book Cost of Land carried in Acct. 211, 4 sheets; 1-A, same (carried in Acct. 211—Misc. Investments; Schneider Exhibits; 2—Expenditures Plant Construction 5-year period 7 P. and blue print chart; 3—Cost of establishing business as of 6-30-25.

February 10, 1926. Filed transcript Proceedings and Testimony hearing January 27-29, inclusive, 1926, 268 p.

February 10, 1926. Session of hearing. Exhibits filed: Williams 11—Present Condition exclusive of Property Disposed of June 30, 1925; Schneider: 4—Annual Rate of Depreciation, Blue Print Charts, Studies of Depreciation, numbered 5—Central Office Equipment; 6—Station Apparatus PBX etc.; 7, Same, less station installation and interior block wires; 8—Station Apparatus; 9—Same; 10—Exchange and Toll pole lines; 11—Exchange and Toll Aerial Cable; 12—Same of wire; 13—Exchange and Toll Underground Cable.

February 10, 1926. Filed transcript Proceedings and Testimony taken January 27, 28, 29, 1926, ending with P. 948.

February 19, 1926. Filed transcript Proceedings and Testimony taken February 10, 1926, 65 p.

[fol. 928] February 25 & 26, 1926. Sessions of hearing. Exhibits filed (25th) Williams: 13—Lease Frank A. Davis and Columbus Citizens Telephone Company; 14—Statement of Exchange Inventory; Dated, P. U. C. O. Case Numbers; 15—Equipment Summary 8-23-23; Allen: A1, Graphis Traffic Expense; A-2, Per cent Toll Board Calls Completed; A-3, Same; A-4, Pay-Roll Routine; A to E; A-5—Toll Line Engineering Practices; A-6, Straightforward Trunking; Rhodes: A-1, Organization Charts; A-2, Department Operation and Engineer Organization Chart, Oct. 1, 1925; A-3, List of Patents; A-4, Partial List Eng'r

Circulars sent to O. B. T. Co., Jan. 1, 1924; A-5, List Development and Research Bulletins sent to O. B. T. Co. since Jan. 1, 1924; A-6, List of Specifications; A-7, Portable Creosote Spray Outfit; A-8, Earth Boring Machines; A-9, Link Type Line Finder Eqpt.; A-10, Mechanical Strength Eastern Cedar Poles; No. A-11, Bulletin No. 217; A-12, Transmission Maintenance Practices; A-13 Underground Conduit Construction; A-14 Pole Line Inspection; A-15—Spec. No. 440 Replacing Spec. No. 4180; A-16 and 17, Specimens of Wire (Filed 26th); Cox: A-1, Standard Supply Contract; A-2, Comparative Prices; A-3, Same; A-4, Graphic, Sales; A-5, Comparison Prices to Associate Companies; A-6, Study Telephone Supplies New England T. & T. Co.; A-7, Same, C. & P. T. Co.; A-8, Same C. & P. Co. of W. Va.; A-9, Graphic Comparison; A-10, Mo.-Ill. Sleet Storm, Cost to Company; A-11, Sleet Storm Map.

March 17, 1926. Filed transcript Proceedings and Testimony taken at hearing February 25th and 26th, 1926, ending page 1210, 195 pages.

March 17 and 18, 1926. Sessions of hearing. Exhibits filed. Kositzky: A-1, Froms supplied by A. T. & T. to O. B. T. Co. A-1-A, Copper Steel Twisted Pair Wire; A-1-B, Bronze Parallel Wire, Spec. 4352; A-2, Parallel Drop Wire; A-3, Photographs illustrating A-2; A-4, House Cable Placing; A-5, Photo illustrating A-4; A-6, Bulletin 139 Type "C" Cable Placing; A-7, Type "C" Terminal Photos; A-8, Emergency No. 1, Local Manuel Switchboard; A-9, Type "P" Ringing and Coin Control Motor; A-10, Underground Cable Placing; A-11, Type "U" Cable Guard; A-12, Double Thimble Guy Rod; A-13, Double Thimble Guy Rod Photos; A-14, Commercial Circular, No. 54; A-15, Commercial Circular No. 60; A-16, Fuse Pots—Field Trial; A-17, Photos Fuse Pots; A-18, Type "B" Construction Truck; A-19, Type "BB" Cable Terminal; A-20, Services Rendered O. B. T. Co. by A. T. T. Letters and Telephone Conversations; A-21, same; A-22-A, Population Estimates; A-22-B, Telephone Reading Course; A-22-c, Specific Applications — Telephone Repeaters; A-22-D, Measuring Work at Test Board; A-23-A, O. B. T. Co. Directory May 1924; A-23-B, O. S. T. Co. Directory July 1925; A-23-C, Same, Consolidated Directory Feb. 27, 1926; A-24-A, Akron Tel. Directory Feb. 1925; A-24-B, Same, August 1925; A-25, Circular Engineering Sub-Com. Nat.

Elec. Lt. Ass'n & Bell Tel. Sys.; A-26, Circular Principles & Practices Jt. Use of Wood Poles; A-27, Photograph, Wood Pole; A-28, Map—Existing and Proposed Toll Cables; A-29, Aerial Toll Cable; A-30, Circular, Telephone Repeater Data (filed March 17); A-31, Comparison Service Rendered O. B. T. Co. by A. Y. & T. Co.; A-32, Instrument Service; A-33, Savings Estimated; A-34, Estimated Future Savings; A-35, Summary of Savings.

[fol. 929] March 17 & 18, 1926. Entry concluded. Anthony Exhibits: A-1, Selecting and Training Supervisors; A-2, Traffic Information; A-3, Transmitting T. C. 208; Dining Service Operation; A-4, Estimated Savings due to Certain Items of Development Work by A. T. & T. and Commission Exhibit A (Prepared for Commissioner Poor) Book Cost of Land. Cooper: A-1, Contemplated Service Connection Charges; A-1-A, Annual report Dec. 31, 1925; A-2, Income Statement; A-3, Contemplated Changes in Mo. Rate PBX Service; A-4, Contemplated Changes in Mo. Rates Ex. Service; A-5, Contemplated Changes in Mo. Rates Semi-Public Telephone Service by Classes of Exchanges.

March 26, 1926. Filed transcript Proceedings and Testimony taken March 17 and 18, 1926, 203 p.

March 30 and 31st, 1926. Sessions of hearing; Exhibits filed: Crunden: A-1, Bonds and Notes authorized for Public Sale since Jan. 1, 1925; A-2, Average Weighted Yields Bonds and Notes, Public Sale ($500,000 over); A-3, Graphic of Yields P. U. Bonds and Notes; Sloan: A-1, Appraisal (based on June 30, 1925 Prices); Company X-2, I. C. C. Order Re-Depreciation; Uprichard: 6—Summary of General and Specific Accounts (services furnished by A. T. & T. Co.); 6-A, List of Certain Accounting Circulars, Bulletins and Letters; 6-B, Other General Accounting Services; 6-C, List of Certain Specific Services; 6-D, Other General Accounting Services; 6-E, Dittoe Accounting Services; 6-F, Standard Forms; 6-G, Audit Services; 7—Standard Telephone Accts.; 8—Accounting Bulletin No. 100; 9—Standard Routine, Overhead Expense; 10—Accounting Letter No. A-18; 11—Acctg. Letter No. C-11; 12—Dittoe M-50; Employees Saving Plan; 13—Evaluation of Certain Savings; 14—Comparison of Cost of Maintaining Accounts; 15—Annual Savings from use of Bell System Standard

Toll Billing Typewriters; 16—Annual Savings, Audit Services, see p. 1448 et seq. of record.

April 14, 1926. Filed transcript Proceedings and Testimony of hearing March 30, 1926, 156 p. L. P. 1571.

May 25, 1926. Session of hearing.

May 27, 1926. Transcript filed, 13 p. ending P. 1584.

June 14, 1926. Memorandum Brief in re: Total Receipts of A. T. & T. Co. under License Contract and Total Expenditures A. T. & T. Co. for Various Services rendered O. B. T. Co. for Years 1921-1925, inclusive (See A. U. R. P. No. 124), filed by counsel on behalf of cities.

June 15, 1926. Hearings on motion in re: Total Receipts of A. T. & T. Co. etc. Hearing recessed to June 29, 1926.

June 30, 1926. Filed transcript Proceedings and Testimony on motion heard June 15, 1926, 98 p. ending with P. 1662. Further recess of hearing to September 23, 1926.

June 29-29, 1926. Filed carbons of orders issued in A. U. R. P. No. 237,—Coshocton; 238—London; 239—New Castle; 240—Mentor; Sedalia—242;—Washington C. H.; 243;—Westerville, suspending schedules increased telephone rates, filed May 29, 1926, for a period of 120 days and consolidating these proceedings with Proceeding herein, being Formal 3307.

[fol. 930] July 13, 1926. Filed Reply Memorandum of The Ohio Bell Telephone Company vs. Motion of the Cities to compel The Ohio Bell Telephone Company or The A. T. & T. to show cost of service under license contract.

August 10, 1926. Filed Reply of Special Counsel to Reply Memorandum of The Ohio Bell Telephone Company on Motion of Cities to make A. T. & T. a party hereto.

August 31, 1926. Filed by The Ohio Bell Telephone Company schedules covering certain changes in toll rates, effective October 1, 1926 (see file of Tariffs, Rates and Service).

September 27, 1926. Filed by City of Youngstown, Motion to require Ohio Bell Telephone Company to increase bond.

September 29, 1926. Emergency Order of the Commission granting authority to alter, amend existing schedule of rates and charges for Toll Service, filed December 21, 1923, effective under bond April 21, 1924 (now subject of investigation under A. U. T. P. No. 124, consolidated with Proceeding herein), by substituting therefor, pending fur-

ther order of the Commission, schedule covering certain changes in toll rates filed August 31, 1926, effective October 31, 1926, and directing bond on file to be amended to cover new schedule.

September 29, 1926. Filed by The Ohio Bell Telephone Company, American Surety Company, Surety, stipulation for $215,000.00 conditioned in conformity to law, extending term of bond heretofore filed.

September 29, 1926. Entry and Order of the Commission approving Stipulation extending term of bonds filed on or before April 19, 1924, to cover refunds which may be required by reason of collection of toll rates and charges contained in Company schedule, effective October 1, 1926.

October 13, 1926. Further recess to October 13, 1926.

October 26, 1926. Further recess to November 9, 1926.

November 9 and 10, 1926. Sessions of hearing. Exhibits filed: Williams: 16—Comparison R. C. N. of Original and Special Paving over Conduits, 9 p.; 17—Net Additions to Property to be disposed of, for year ending June 30, 1926; 18—Same; Reproduction Cost New; 19—Net Additions to Property; 20—Summary of Appraisal (exclusion of property to be disposed of); 21—Present condition (exclusive of property to be disposed of). State Exhibit 1—Central Office Proof of Test for Common Battery Switchboard, Company, Large and Small Exchanges.

November 18, 1926. Filed transcript November 9th and 10th hearing (p. 1663-1797, 134 p. Vol. V).

December 7-10, 1926. Further sessions of hearing. Exhibits filed by Commission's Experts: Morse: 1—Comparison Ohio Bell Telephone Company with other large Companies—Revenues, Expenses and Profits, 2 sheets; 2—Details Materials and Supplies on Hand, 1923025 by months, 2 sheets; 3—Cash on Hand; 4—Employees' Working Funds; 5—Reserves for Accrued Depreciation from September 21-December 31, 1925; 6—Sources and Application of Funds; Hagenah: 1—Analysis of Accounts, 1926.

[fol. 931] December 15 & 16, 1926. Further sessions of hearing. Exhibits filed: Commission-Hagenah: 2—Inventory and Appraisal; 3—Comparison of Appraisal Results June 30, 1925, Williams-Sloan-Hagenah; 4—Working Capital, 1925; 5—Analysis and Distribution of Licensee Revenue; 6—Adjusted Net Income for Return on Fair Value of Property as of June 30, 1925; 7—Report, Measure of

Fair [Valu]* Return; Dorsey: Development of Unit Costs: 1—Acct. 241, Exchange Pole Lines; 2—Acct. 251, Toll Pole Lines; 3—Acct. 243, Exchange Aerial Wire; 4—Acct. 253, Toll Aerial Wires; 5—Acct. 242, Exchange Aerial Cable; 6—Acct. 243, Exchange Aerial Wire Drops; 7—Acct. 244, Exchange Underground Conduit-Main; 8—Acct. 245, Exchange Underground Cable-Main.

January 4, 1927. Filed transcript Proceedings and Testimony of heatings taken December 15-16, 1926. P. 1798-2254, 456 p. Vol. 6.

February 15, 1927. Session of hearing. Exhibits filed: State Witness, Morse: Statements, 7—Income Profit and Loss and Surplus Year Ending December 31, 1926; 8—Telephone Operating Revenues Year ending December 31, 1926; 9—Expenses, Year ending December 31, 1926; 10—Balance Sheet as of December 31, 1926; 11—Net Additions to Plant and Property during Year 1926 and Book Value as of December 31, 1926; 12—Net Additions to Plant and Property July 1 to December 31, 1926; 12—Net Additions to Property and Plant July 1, to December 31, 1926; 13—Reserve for Accrued Depreciation Year 1926; 14—Source and Application of Funds; 15—Analysis and Distribution of Licensee Revenue—Dr.; 16—Adjusted Net Income Available for return on Fair Value of Property, Used and Useful as of December 31, 1926.

February 16 & 17, 1927. Sessions of hearing. Exhibits filed: Ohio Bell Telephone Company: Spring: 1—Sheets 1 and 2, Income Statement; 3—Copy of Commission's Order 2367—Joint Petition of The Ohio Bell Telephone Company and Ohio State Telephone Company, dated September 17, 1921.

February 23-25, 1927. Further sessions of hearing. Exhibits filed by Company: AA-1, Copy of P. U. C. O. No. 2077, Springfield, Xenia and Central Union Telephone Company, Transfer Order; AA-2, Final Summary of Accounts, Springfield and Xenia Telephone Company; AA-3, P. U. C. O. Order in Proceeding No. 288, Consolidation Ohio State Telephone Company and 14 other Companies.

March 11, 1927. Filed transcript Proceedings and Testimony of February 23-25, 1927, hearing, Pages 2494-2664.

May 16, 1927. Filed, Brief of Special Counsel for State

[*Words and figures enclosed in brackets erased in copy.]

and Ohio Bell Telephone Company on Valuation—Tentative.

July 6, 1927. Filed Reply Briefs on Special Counsel for State and Ohio Bell Telephone Company on Tentative Valuation.

July 7, 1927. Hearing on Oral Motion re-opening of telephone books and records for inspection of Expert Allensworth for Special Counsel of State.

July 8, 1927. Filed transcript on oral motion in re Expert Allensworth. 13 p.

[fol. 932] July 11, 1927. Entry overruling Motion of The Ohio Bell Telephone Company in re: Allensworth, Investigator, and directing exhibit of its books, records, documents and papers and re-opening proceedings for receipt and consideration of his findings and reports; exceptions of Ohio Bell Telephone Company taken and noted.

November 29, 1927. Entry assigning proceedin/s for further hearing Friday, December 16, 1927, at 9:30 o'clock A. M., Hearing Room, with provision that session of such date be followed by further session beginning 9:30 A. M., EST, Saturday, December 17, 1927.

December 17, 1927. For good cause shown, the Commission vacated hearing assignment for this day.

December 19, 1927. Entry assigning proceeding for further hearing Tuesday, January 17, 1928, at ten o'clock A. M. and reserving January 18, 19, 23 and 24, 1928, for further sessions of such hearing.

January 3, 1928. Tentative hearing dates January 17-24, 1928, released, and [February 2, 1928]* assignment made for January 27, 1928, ten o'clock A. M. Notice given.

January 27, 1928. Session of hearing.

February 2, 1928. Filed transcript Proceedings and Testimony January 27, 1928 hearing, pages 2678-2742, inclusive. Further hearing assigned for March 5, 1928.

March 1, 1928. Upon application of respondent and good cause shown, March 5, 1928, assignment vacated and hearing reassigned, for Wednesday, March 21, 1928, at ten o'clock A. M., EST Hearing Room. Notice given.

March 21, 1928. Sessions of hearing. Exhibits filed: (State). Allensworth: Valuation as of June 30, 1925—1, Reproduction Cost; 2—Analysis Reproduction Cost Outside

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[* Matter enclosed in brackets, struck out in copy.]

Plant; 3—same, including Interior Block Wires; 4—Analysis Reproduction Cost of Outside Plant; 5—Comparison, Reproduction Cost; 6—Collation—Company and Allensworth, Reproduction Cost. Exhibit 5-A, to be furnished. Further hearing continued to a day to be fixed.

March 30, 1928. Filed transcript Proceedings and Testimony of March 21st, 1928, P. 2743-2845, 102 p.

July 5, 1928. Entry assigning further hearing for Monday, August 6, 1928, at ten o'clock A. M., EST Hearing Room, with reservation for continuances week of August 15 and 20, 1928. Notice given.

July 11, 1928. Entry vacating assignment of August 6, 1928 and directing resumption of hearing Wednesday, August 15, 1928 at ten o'clock A. M., EST Hearing Room and additional reservations for such hearing Monday, August 27th with following days of that week.

August 15, 1928. Sessions of hearing. Exhibit filed: Allensworth 5-A, Valuation as of June 30, 1925, Material Prices and (one marked No. 5) Valuation of Reproduction Cost—Exchange Underground Conduit; Paving over Conduit; Exhibits Cross Examination: 1—Copy of order issued by Commission in Proceeding No. 194; 2—Details Labor Unit Costs, furnished and required, Exchange Pole lines; 3, Unit Costs—Poles; 4, Guy, Vol. 5, O. B. T. Co. val. 6-30-25.

August 15-17, 1928. Transcript filed, P. 2846-3182. Vol. 8.

August 24, 1928. Filed transcript Proceedings and Testimony, P. 3183-3233. Vol. 8.

[fol. 933] November 8 and 9, 1928. Sessions of hearing. Adjournment taken to November 26, 1928.

November 26, 1928. Session of hearing. Adjourned to a date to be fixed by Commission.

December 5, 1928. Filed transcript Proceedings and Testimony Nov. 26, p. 3403-3439.

December 28, 1928. Proceeding assigned for further hearing Thursday, January 10, 1929, at ten o'clock A. M., Hearing Room, Notice given.

January 10 and 11, 1929. Further hearing. Exhibits filed: McBerty: 1—Price by Western Ohio Electric Company for Telephone apparatus; 2—Comparison Shop Cost and List Prices as of July 1, 1924; Allensworth: Unit Costs, 6—Aerial Cable; 7—Underground Cable; 8—Pole Lines and Aerial Wire; 9—Underground Conduit; 10—Paving; 11—Labor. Hearing recessed to Wednesday, February 13, 1929.

January 19, 1929. Transcript Proceedings and Testimony filed, 3440-3556, 116 p.

February 13 and 14, 1929. Further hearing. Exhibits filed Ohio Bell Telephone Company: Hogan: 1, 1-a, 2, 3, 4, 5, 6, 7 A-B-C. Hearing recessed to February 18, 1929, at 10:00 A. M.

February 18, 1929. Session of hearing.

February 28, 1929. Filed transcript Proceedings and Testimony, February 13 and 14, 1929, pp. 3557-3813, 256 p.

March 6, 1929. Filed Memorandum Brief on behalf of Ohio Bell Telephone Company.

March 11, 1929. Further hearing had, recessed to a day to be fixed by Commission. Exhibits filed: Hogan: 8—Unit Cost, Pole Lines, etc. as of June 30, 1925; 9, Reproduction Costs as of June 30, 1925; 10—Sheet 1—Comparison, Reproduction Cost New of Material, etc., Outside Plant; Sheet 2—Comparison Reproduction Cost New of Labor.

March 15, 1929. Entry citing The Ohio Bell Telephone Company to appear at office of Commission Wednesday, March 20, 1929, at ten o'clock A. M. to Show cause why bond should not be increased.

March 20, 1929. Hearing held in re increase of bond. Exhibits filed: Bond-Y—Statement Revenues arising from Rate Increases under Bond; Bond-X—Copy of Commission's Order citing Company.

March 20, 1929. Further regular hearing: Exhibits filed: Company: Spring: 2—Income Statement Year ending December 31, 1927; 3—Same; 4—Net Additions to Fixed Capital and Construction work in progress, as of June 30, 1927; 5—Same Year 1928; 6—Same Six Month Period ending December 1, 1928; 7—Book Cost of Fixed Capital and Construction Work in Process. Schneider: 14—Underlying Leasehold October 11, 1899; 15—Sub-Leases November, 1922; 16—Assignment Underlying Leases January 1923; 17—Assignment Sub and Underlying Lease, January 19, 1923; 18—Assignment Underlying Lease March 1, 1923; 19—Same, March 1, 1923; 20—Cleveland Appraisal as of April 1, 1914, Ohio Bell Telephone Company.

March 20, 1929. Filed transcript of hearing March 11, p. 3814-3942, 128 p.

[fol. 934] March 21, 1929. Entry directing The Ohio Bell Telephone Company, within thirty-day period to file bond, conditioned in conformity to law, in sum totalling collec-

tionm to March 15, 1929, ($10,948,470.10), plus one-half estimated further collections ($3,046,137.04) for ensuing year, plus a sum equivalent to 6% interest from date of imposition and collection to date six months from and after date hereof.

March 27, 1929. Filed transcript Proceedings and Testimony of hearing March 20, 1929 in re increase of bond, 38 p., 3943-81 p.

April 15, 1929. Filed Bond, Undertaking and Security of The Ohio Bell Telephone Company, as principal and American Telephone and Telegraph as surety in the sum of $13,112,668.49. Entry approving such bond.

November 14, 1929. Upon application of Hon. Gilbert Bettman, Attorney General, entry assigning proceeding for further hearing Wednesday, December 18, 1929, at ten o'clock A. M., EST, Hearing Room. Notice given.

December 18, 1929. Hearing called. Exhibits filed: McBerty: 3—Comparison of Appraisals Central Office Switching Equipment, Acct. 221, Ohio Bell Telephone Company grouped as in Exhibit No. C-O-E-1. C. O. T.: Detail of Unit Costs, 1925 Material for Certain Typical offices, (Acct. 221).

December 31, 1929. Filed transcript Proceedings and Testimony, P. 3982-4069, 87 p., hearing called December 18, 1929.

February 3, 1930. Entry assigning further hearing of Proceeding to Tuesday, February 18, 1930, at 1:30 o'clock P. M., EST, Hearing Room with reservation for two following days for continuance of session.

February 13, 1930. By agreement of counsel State of Ohio and respondent, Ohio Bell Telephone Company, hearing assignment February 18, 1930, vacated and proceedings reassigned for Wednesday, February 19, 1930, 10:00 A. M. Notice given.

February 19, 1930. Session of hearing. Exhibits filed: Company: Eide: 1—Historical, Physical and Financial Data; Snyder: 21—Annual Rate of Depreciation Each Class of Plant and Equipment. Recessed to March 17, 1930, 10:00 A. M. Briefs to be filed April 1 and Oral Arguments April 15, 1930, 10:00 A. M.

February 27, 1930. Filed transcript Proceedings and Testimony of February 19, 1930, 95 p., ending with P. 4165.

March 11, 1930. By agreement of counsel, hearing assign-

ment March 17, 1930, vacated and such further proceeding assigned for Thursday, March 20, 1930, at ten o'clock A. M., EST, Hearing Room. Notice given.

March 20, 1930. Session of hearing.

April 2, 1930. Filed transcript Proceedings and Testimony as of March 20, 1930, 84 p.

April 10, 1930. Filed, Brief of The Ohio Bell Telephone Company, on Valauation.

April 11, 1930. Filed, Brief of Special Counsel P. U. C. valuation.

April 17, 1930. Session of hearing. Exhibits filed: Eide: 2—Book Cost of Fixed Capital.

May 22, 1930. Filed Reply Brief of Ohio Bell Telephone Company in re: Tentative Valuation as of April 30, 1922.

[fol. 935] January 10, 1931. Finding and Order of the Commission fixing Tentative Valuation of the property used and useful of The Ohio Bell Telephone Company for the furnishing of local exchange and Toll Telephonic service throughout the State of Ohio to be $104,735,000. Copy of such entry to ge served by registered mail to said The Ohio Bell Telephone Company, the Attorney General of the State of Ohio and the Mayors of Akron and one hundred and fortynine (149) other municipalities of the State of Ohio.

February 7, 1931. Filed Protest and Notice of Protest of Valuation on behalf of The Ohio Bell Telephone Company, filed.

February 9, 1931. Filed Protest of the Attorney General of Ohio on behalf of the municipalities and telephone users in communicities affected by Valuation of Commission.

February 9, 1931. Entry assigning hearing on protests to Tentative Valuation for Tuesday, March 3rd, 1931, at ten o'clock A. M., EST, Hearing Room. Notice given.

March 3 & 4, 1931. Session of hearing Protests vs. Tentative Valuation. Recessed to April 15, 1931, 10:00 o'clock A. M.

March 19, 1931. Filed transcript Proceedings and Testimony of hearings March 3rd and 4th, P. 4662-4834, 172 p.

April 15, 1931. Session of hearing. Exhibits filed: Brett: 1—Sheets 1-7, Property, Net Income and Rate of Return, Year 1924; 2—Sheets 1-6, Income Statement; 3—Sheets 1-2, Gross Additions to Fixed Capital; 4—Sheets 1 and 2, Fixed Capital Withdrawn year ending December 31, 1923; 5—Sheets 1-7, Net additions to Fixed Capital; 6—Reserve

for Accrued Depreciation; 7—Property, Net Income and Rate of Return, 3-Mo. ending March 31, 1931; Wilson: 1—Book Cost of Property; 2—Book Cost of Property, Intra and Interstate.

April 16, 1931. Further hearing held. Exhibits filed: Wilson—Exhibits: 1 and 2; Gregory: 1—Western Electric Company, Inc., Sales and Net Profits, 1916-1930; 2 Sheets 1 and 2; 5-year period 1925-29; 3—Net Profits to Sales, 38 Manufacturing Companies; 4—dittoe; 5—Sales and Net Profits Western Electric Company-Non Bell Business; 6—To be filed, filed May 8, 1931; 7—Sales to Ohio Bell Telephone Company.

April 17, 1931. Further hearing held; recessed tentatively to May 7, 1931. Exhibits filed: Heiss: 1-8, inclusive, Certified Annual Reports The American Telephone and Telegraph Company Years 1923, 24, 25, 26, 27, 28, 29, 30; 9—Agreement American Telephone and Telegraph Company and The Ohio Bell Telephone Company, July 24, 1930; 10—Sheets 1 and 2, Estimate of Costs incurred; B—Amounts received for License Contract Services; 11—Summary Period 1923-30 Inclusive Costs and Amounts Received License Contract Services; 12-19, inclusive; Costs and Amounts received License Contract Services; 12-19, inclusive, I. C. C. Annual Reports, Schedules and Prescribed Accounts, 1923 to 1930, inclusive; 20-27 inclusive, Estimated Cost to Ohio Bell Telephone Company of service used under License Contract based on Apportionment of total License payments by all companies 1923-1930, inclusive.

April 30, 1931. Filed transcript of Proceedings and Testimony of hearing April 17, 1931, 4835-5092, 258 p.

May 1, 1931. Upon application of Attorney General of State of Ohio and assent of The Ohio Bell Telephone Company, hearing assignment May 7th, 1931, vacated and proceeding reassigned for Monday, May 25, 1931, at ten o'clock A. M., Hearing Room. Notice given.

[fol. 936] May 8, 1931. Filed Gregory Exhibit No. 6: Average Investment Non Bell Business, Years 1916-30, inclusive, see Pages 4980 et seq of testimony taken April 16, 1931.

May 25, 1931. Upon application of the Attorney General and good cause shown, hearing assignment this and succeeding two days passed and proceeding continued to a day to be fixed.

June 4, 1931. Entry assigning proceeding for further hearing Monday, June 15, 1931, at ten o'clock A. M. EST, Hearing Room with succeeding two days reserved for purpose of this hearing.

June 8, 1931. Because of conflicting dates of counsel, hearing assignment June 15, vacated and proceeding reassigned for Wednesday, June 17th, 1931, 10:00 A. M., Commission reserving succeeding days for continuance.

June 17, 18, 19, 31. Sessions of hearing. Recessed to a day to be assigned. (Exhibits requested, see July 8, 1931.)

July 1, 1931. Filed transcript Proceedings and Testimony, P. 5093-5377, 284 p.

July 8, 1931. Exhibits handed to Commission's Attorney, request made June 19. Heise: 1-12, 1 vol. 1—Breakdown of Exhibit 10, to show calculations, data, etc.; 2—Western Electric reimbursement to American Telephone and Telegraph Company for patents; 3—Operations General, total costs allocated to service rendered under license contract by years; 4—Amount Spent Long Distance Department, advertising, years 1928-30; 5—Audits made A. T. & T. for OBT. Co.; 6—State—showing number of shares A. T. & T. stock purchased by employees Ohio Bell Telephone Company 1925-1930; 7—Instrument maintenance Item, etc.; 8—Amount unexpended Balance in reserve in re instruments time of sale to Bell Ass'n. Co.; 9—No. of instruments sold to Ohio Bell Telephone Company; 10—Statement of Taxes allocated in Ex. 10, including serveral kind of taxes; 11—method of computing cost of money; 12—Total Long Distance Investment, 1923-1930.

July 13 & 16/31. Exhibits filed. Company: Gregory: Western Electric Company data (responsive to requests and delivered to Attorney Herbert) in one volume. 1-21. 1—Analysis of Average Investment in Operations Bell Company; 1916-1930; 2—Billing of Repairs included in sales together with cost 1916-1930; B—Billing of Repairs, Ohio Bell Telephone Company including in sales shown in Ex. No. 7, 1922-30; 3: a—Agreement 2-6-1882, American Telephone Co. and Western Electric Company; b—Dittoe, 4-8-1908; 4—Sales of Telephone Receivers, transmitters and Induction Coils 1916-1920; 5 & 7—Statement Assets and Liabilities Graybar Electric Company, 1926-27-28; 6—Western Electric Company Sale to Bell and Non-Bell customers, 1 1916-1930 and Ohio Bell Telephone Company 1922-1930, di-

vided betw-en W. E. Manufacture and Supplies, 8-a, Depreciation included in cost of sales to Bell and Non-Bell Business 1916-1930. b—Depreciation used in Federal Uncome Tax Returns 1916-1930; 9—Earnings for 1931 and 1932 on prospective Bell business as estimated 6-10-31; 10—Relation of Extraordinary Reserve against Plant Accounts involved as of 12-31-27; 11—Average Investment in Tools and Fixtures 1916-30; 12—Analysis of Cost of Sales by Bell and Non-Bell Customers 1916-1930; 13—Income Tax Statements, objected to by company, not furnished; 14 and 15—Cost of Sales per stockholders reports compared with cost of sales, per exhibits; 16—Complied with in No. 6 above; 17—Analysis Cost of Sales—years 1925 and 1930, also allocation of sales between Bell and Non-Bell Companies; 18—Federal Income Tax included in cost of sales, Bell Business, 1916-1930; 19—Non Bell Assets transferred to Electrical Research Products, Inc.; 20 and 21—Detail of Actual Manufacturing costs W. E. Co. and Figured Costs of W. E. (20 and 21 not furnished, OBT Co. objected.

[fol. 937] September 15, 1931. Entry assigning proceeding for further hearing, Monday, September 28, 1931, at ten o'clock A. M., EST, Hearing Room. Notice given.

September 28, 1931. Session of hearing.

October 7, 1931. Filed in triplicate transcript Proceedings and Testimony of hearing held September 28, P. 5378-5475, 57 p.

December 4, 1931. Filed Memorandum Ohio Bell Telephone Company responsive to State's Request for Additional Information.

December 28, 1931. Filed, Memorandum Brief on behalf of the State in reply to Memorandum of Company, dated December 3, 1931.

December 29, 1931. Entry assigning proceeding for further hearing Wednesday, January 20, 1932, at ten o'clock A. M. Hearing Room for determination of the deposition to be made of Request for Specific Information preferred by the Attorney General.

January 9, 1932. Upon application of counsel of state and over objection of Ohio Bell Telephone Company, hearing January 20, 1932, vacated and hearing reassigned for Wednesday, January 27, 1932, at ten o'clock A. M., Hearing Room. Notice given.

January 27, 1932. Hearing held in re Request for Specific Information.

February 2, 1932. Filed transcript Proceedings and Testimony hearing January 27, 1932, Pp. 5486-5539, 53 p.

April 22, 1932. Issued by Commission, Memorandum in re Data requested by Attorney General to be used in prosecution of State's objection to Commission's Tentative Valuation and directing Ohio Bell Telephone Company to proceed with all diligence to co-operate with Attorney General in preparation for further hearing by preparing and furnishing exhibits and statements rendered available for inspection records and documents set forth in entry and fixing a period of 60-days as a reasonable period for preparation of exhibits.

May 16, 1932. Filed by Ohio Bell Telephone Company—Responsive to Request No. 15, Volumes 1-2-3-4-5-6- (2 Binders) A. T. & T. Co., Report Forms; 2 Binders Western Electric Company—General Accounting; Responsive to Request No. 16, Vol. 1-2—Western Electric Company—Responsive to Request Nos. 24, 25 & 26—Appellant A-70-98 and A 109 and 110; Def.—D-19 to D-91, inclusive excepting D-52, 70 and 72 (to be furnished later—Telep. Eng'r's Department).

May 20, 1932. Filed by Ohio Bell Telephone Company—Responsive to Request No. 13. Analysis of Non-Bell Property by Classes 1916-30; Dittoe Bell Company Plant by Classes, 1916-30.

June 17, 1932. Filed Statement in response to Request No. 10—Expenses Charged against Non Operating Income 1916-1930 inclusive.

June 22, 1932. Filed Statement in Responses No. 5, Analysis of Avg. Payables, and 7, Development Expense to Electrical Research Products, Inc., Years 1927-31, inclusive.

July 1, 1932. Filed application of The Independence Indemnity Company for an order substituting it as surety in same principal sum, $192,000.00 of The American Guaranty Company, original bond filed in Proceeding, A. U. R. P. No. 214—which proceeding is part hereof.

July 2, 1932. Entry approving Bond of Independence Indemnity Company in sum of $192,000.00 of The American Guaranty Company, original A. U. R. P. No. 142, a part of [fol. 938] the proceeding herein. Commission reserving to itself the right to change or modify conditions of undertaking or require respondent to furnish other or additional sureties thereon.

July 23, 1932. Filed Memorandum of The Ohio Bell Tele-

phone Company in re: Further Proceedings in Case with Exhibit "Property" Net Income and Rate of Return for Year 1931".

November 2, 1932. Filed Statement No. 5 in accordance with Stipulation 12/20/32, Paragraph No. 7, Page E; 1—Gross Additions to Plant Associated Companies exclusive of General Equipment; Associated Companies exclusive of Bell of Canada and Long Lines; 2—Number of Regular Employees 6-30-31, Associated Companies exclusding Bell of Canada and Long Lines; 3—Dittoe including Bell of Canada but excluding Long Lines; 4—Total Expenses Year 1931 for associated companies excluding Bell of Canada and Long Lines; 5—Total Telephone Expenses Year 1931 for Associated Companies including Bell of Canada excluding Long Lines.

November 28, 1932. Upon Commission's own motion, proceeding assigned for further hearing Monday, December 12th, 1932, at nine-thirty A. M. EST Hearing Room. Notice given.

December 7, 1932. Upon Commission's own motion, hearing assignment December 12, 1932, vacated and such hearing hereby is reassigned for Monday, December 19, 1932, at 9:30 o'clock A. M., Hearing Room. Notice given.

December 19, 1932. Without formal entry, hearing continued to Tuesday, December 20, 1932.

December 20, 1932. Session of hearing; Filed: Stipulation in re Testimony offered in Equity No. 3746 Illinois Bell Telephone Company vs. G. Gale Gilbert, Donald Belcher and nine other witnesses; Exhibits: Eide—3, Property, Net Income and Rate of Return 1931 4—Dittoe; 10—Monthly Period ending October 31, 1932. Hearing recessed to December 29, 1932, at ten o'clock A. M.

December 29, 30 & 31, 1932. Heard. Exhibits filed: Brett No. 8—Fixed Capital as of 12/31/21 and Wood Exhibits 1-20.

January 1, 1933. Exhibits furnished attorney; Wilson Exhibits 2-A—Additions, Retirements and Charges to Depreciation Reserve in connection with replacement; Central Office Equipment, Akron, Dayton, Columbus, Franklin, and Cleveland, Eddy, Glenville Offices; B—Number of Stations in Akron and Dayton for period 1-1-25 to 1-1-32, together with cutover dates at which time conversion was made to dial operations.

January 7, 1933. Filed transcript Proceedings and Testi-

mony December 19 and 20th*th*, hearings. P. 5539-5680, 140 p.

March 31, 1933. Filed Resolution Chamber of Commerce Findlay, requesting immediate disposition of proceeding herein.

April 7, 1933. Filed by Ohio Bell Telephone Company, Exhibits and Testimony Stipulated in Entry of December 20, 1932, to be made a part of case herein, originally offered in Illinois Bell Telephone Company in Equity No. 3746.

[fol. 939] April 7, 1933. Entry concluded. (1) Copy of Abstract of testimony (7 volumes) 2 copies each, Index of Plaintiff's Evidence and Exhibits (1 vol. for each copy) Index of Defendant's Evidence and Exhibits 1 vol. for each copy; Additional Objections to Exhibits offered by Defendant (1 vol. for each copy); 4, Defendant's Answers to Plaintiffs' Additional Objections to Exhibits offered by defendants, filed December 10, 1932 and to Plaintiffs' Objections made in record. 1 vol. for each copy). (2) Two copies each of "A" Exhibits 66 to 124 inclusive; 130 to 182, inclusive; 193 to 195 inclusive; 197 to 202 inclusive; 205-207 inclusive; 212-219, inclusive; 222-233 inclusive, 235-242, inclusive; 253-262, inclusive, 266, 270, 271. (3) Two copies each of "A"-"B" Exhibits; A-88-B, A-93-B, to A-96-B, inclusive; A-101-B, A-108-B, A-112-B, A-113-B, A-117-B, A-118-B, A-119-B, A-121-B, A-124-B, A-150-B, A-151-B, A-152-B, A-153-B, A-154-B, A-155-B, A-156-B, A-157-B, A-158-B, A-159-B, A-160-B, A-161-B, A-162-B, A-163-B, A-166-B, A-167-B, A-168-B, A-169-B, A-170-B, A-174-B, A-175-B, A-179-B, A-197-B, A-200-B, A-201-B. 4, Two copies of Exhibits A-196, A-208, A-269 (a). Two copies of Exhibit A-90-B.

April 7, 1933. Filed with Commission's attorney copies of The Ohio Bell Telephone Company Exhibits stipulated in entry of December 20, 1932, to be made a part herein originally offered in Illinois Bell Telephone Company in equity No. 3746, grouped in two copies each. (2) "D" Exhibits 7-8, 19-91 inclusive, 93 to 117, inclusive, 122, 124, 125, 128, 135 to 137 inclusive. "X" Exhibits 15-A, 15-B, 49-A, 68, 68-A, 74, 74-A, 76, 77, 193, 194, 196, 197, 198, 222, 261, (submitted direct to Attorney Herbert). One copy of deposition Exhibits 1, 3 to 12, inclusive, 18, 20 to 23, inclusive; 26, 28, 30 to 32, inc.; 34, 38, to 53, inclusive; 66 to 77 inclusive; 101, 110, 111, 114, 119, 122, to 134, inclusive;

138, to 144, inclusive; 146 to 193 inclusive; 195 to 197 inclusive; 199, 202, 204 and 205.

April 7, 1933. Filed by Ohio Bell Telephone Company (complying with Judge Geiger's request) Eide. Supplement No. 1, Sheet 1, List of Ex. showing operating expenses by years; Sheet 2, Detail Operating Ex. shown in Brett Exhibit No. 1, Lines 5, 6, 7 & 8, Year ending December 31, 1925, total and separated bet. Intra and Interstate.

April 7, 1933. (1 copy of first thirty sheets only (261), 318, 319, 322, 343, 353, 357. Additional "X" Exhibits referred to in stipulation of December 20, 1932, pages 4 & 5 (submitted directly to Attorney Herbert) 13-15, inclusive, 16-50-A, inclusive, 55, 66-75, inclusive, 76, 77, 79 to 83-B including 83-A as corrected by defendants, 88 to 97 inclusive, 99, 100, 104, 105, 109, to 121 inclusive, 141, 148, 192 to 198 inclusive, 200 to 202, inc., 205 to 208 inclusive, 211, 217, 219, 222, 225, 227 to 261, inc., 262 (no copy available for P. U. C. O., O. B. T. Company has one which will be available for their use), 263 to 270-B, inclusive, 294, 295 (pages 1, 2, 14, 15 & 19). Their has been added to Exhibits X 294 and X-295 figures for the year 1931 which did not appear in the Exhibits for the Illinois Case, 307, 313 and 319 inclusive, 321, 322, 335, 343, 348, 353, 356, to 367, inc., 369, to 394, inclusive, 397, 398, 422, 433, 434 (420) no copy available for P. U. C. O. or O. B. T. Company. Copy later furnished.

April 12, 1933. Without formal assignment conference arranged for Tuesday, April 18, 1933 at one thirty o'clock p. m. E. S. T. to which Attorney General and Solicitors of Cities and Villages were invited.

April 18, 1933. Conference with Attorney General and Solicitors and Villages. Resolution presented W. Geo. Kerr, Chairman of Representatives of Towns.

April 18, 1933. Filed, Transcript of Conference—5726-5782, 54 p. 2 carbon copies. Villages, etc. for early consummation of matters at issue.

June 21, 1933. See list of Exhibits furnished Commissioner Hopple 1-12 inc.

[fol. 940] June 23, 1933. Ohio, State of ex rel Jack B. Dworken vs. E. O. Hopple, et al, Summons in prohibition in Supreme Court No. 24262.

August 12, 1933. Filed by The Ohio Bell Telephone Company Request (in form of letter) to submit evidence of prop-

erty values, revenues, expenses for period of investigation of all Robinson and Pence law cases, separately.

August 18, 1933. Filed by the Commission's Special Counsel, Brief on Final Value and Rates.

August 21, 1933. Filed Ohio Bell Telephone Company's letter dated August 12, 1933 and Commission's Response thereto, dated Aug. 21, 1933, in re: Submission of Evidence of its Property Values, revenues and expenses for the period under investigation for all Robinson and Pence Law cases, separately.

August 24, 1933. Filed 5 sheets requested by Comm. Geiger. Re: use of Depreciation Reserve for financing net additions.

September 29, 1933. Filed Copy of Resolution No. 278, Bellaire, Ohio, passed by Council September 25, 1933.

October 5, 1933. Filed Resolution Council City of Kenton in re decision Ohio Bell Telephone Company.

October 9, 1933. Filed Resolution Bellaire American Club in re: decision Ohio Bell Telephone Company.

October 13, 1933. Filed, Resolution Council of Martins Ferry, in re decision Ohio Bell Telephone Company.

October 16, 1933. Filed Communication Solicitor Village of Osborn in re decision Ohio Bell Telephone Company.

October 31, 1933. Filed Resolution Council City of Bellaire in re decision Ohio Bell Telephone Company.

October 16, 1933. Filed Brief of The Ohio Bell Telephone Company in Support of Protest vs. Tentative Valuation, also in re: Final Valuation, Revenues and Expenses and Rates.

October 19, 1933. Filed Resolution No. 50 Village Commission South Charleston in re decision Ohio Bell Telephone Company.

October 21, 1933. Filed Resolution Village of Gahanna, passed October 2, 1933, in re: Decision Ohio Bell Telephone Company.

October 26, 1933. Filed Resolution Shadyside American Club in re: decision Ohio Bell Telephone Company.

November 13, 1933. Filed Memorandum Ohio Bell Telephone Company setting forth Added Expense imposed upon Ohio Bell Telephone Company through compliance with N. R. A. Telephone Code.

December 22, 1933. Filed by The Ohio Bell Telephone Company renewal of request of August 12, 1933 to submit

certain evidence. (Information requested by Commission-Geiger) Comparison rates 1920-1923-1924, E. W. Wood CPA, Balance Sheet November 30, 1933, submitted by Uprichard.

December 28, 1933. Commission reply of December 28, 1933, filed, O. B. T. Company requests December 22, 1933. [fol. 941] January 16, 1934. Opinion and Finding of Majority Commission (Geiger and Schaber and Dissenting Opinion of Minority (Hopple) and Order of the Commission modifying, amending and correcting Tentative Valuation; fixing Final Valuation; directing Ohio Bell Telephone Company within ninety days from date of service hereof to prepare and file new rate schedule for all classes of intrastate service in State of Ohio giving first consideration to a proper reduction of the increased rates so charged and collected which shall produce to the company net income not in excess of that found by the Commission to be fair and reasonable as of June 30, 1925, thereupon The Ohio Bell Telephone Company begin and prosecute with all diligence repayment of difference between charges actually imposed and collected for rendition of service for years 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932 and charges for such service as set forth by aforesaid schedules, together with interest as provided by law; provided, that expiration of one year from date of filing such schedules all unrepaid excess revenues shall by The Ohio Bell Telephone Company be paid into the Treasury of political subdivision in which such service was rendered, and retaining jurisdiction for making such further and other orders as may be necessary and proper in the premises of Proceeding No. 3307 and all proceedings pending before the Commission to which Ohio Bell Telephone Company is party, not heretofore consolidated are now here ordered to be consolidated in this proceeding.

February 6, 1934. Filed Protest and Application and Petition of The Ohio Bell Telephone Company for a rehearing of this cause.

February 7, 1934. Entry assigning Application and Petition for Rehearing of The Ohio Bell Telephone Company, together with all other pleadings as may be filed, for argument, Tuesday, February 20, 1934, at ten o'clock A. M., Hearing Room. Notice given.

February 17, 1934. Filed by The Ohio Bell Telephone

Company, Application and Request for Modification of Commission's Findings and Order entered herein January 16, 1934, finding rates now charged by respondent are just and reasonable and fixing such rates hereafter to be charged and collected for its service until changed, or modified in accordance to law, to permit respondent to introduce evidence of fair value of property, its revenues, expenses and net income in each of the separate cases wherein respondent is collecting rates pursuant to bond as provided in so-called Robinson law and Pence law (108 Ohio Laws, p. 1094 and p. 110, p. 366) to afford respondent opportunity to examine, analyze, explain and rebut information considered by Commission in arriving at said Findings and Order of January 16, 1934 (P. 16 of Findings).

February 20, 1934. Hearing and Argument Application and Petition for Rehearing.

February 26, 1934. Filed transcript of hearing and argument on Application and Petition for Rehearing, 95 p.

March 1, 1934. Finding and Order denying Application for Rehearing; Application and Request for Commission to modify its findings deciding and ordering rates now charged by respondent for services rendered in Ohio are just and lawful rates and by fixing and determining such rates as rates hereafter to be charged and collected by respondent for its services until changed or modified in accordance with law, denied; and denying request of respondent to introduce evidence of fair value of its property, its revenues, expenses and net income in each of separate cases wherein respondent is collecting rates pursuant to bond as [fol. 942] provided in so-called Robinson law and so-called Pence law. Denies application and request of The Ohio Bell Telephone Company to afford respondent an opportunity *an opportunity* to examine, analyze, explain and rebut information considered in arriving at Findings and Order of January 16, 1934 (P. 26 of said Findings) the Commission determined on valuation of June 30, 1925, that portions of increased rates collected by said Company were unreasonable and excessive. To all of which orders, Ohio Bell Telephone Company excepts, exceptions noted of record. It appearing order of the Commission entered January 16, 1934, failed to set forth correct and entire order of Commission as actually made, it is Ordered, that true and correct order be entered herein as of January 16, 1934, nunc

pro tunc as follows: Ordered, that said The Ohio Bell Telephone Company be and hereby it is notified, directed and required within 90 days from date of service of copy of order to prepare and file with Commission new schedules prescribing rates, charges and rentals for all classes of intrastate service furnished in State of Ohio, giving first consideration of increased rates charged in several exchanges in State and for intrastate toll service collected under bond, as provided by Ohio Laws Vol. 108, pp. 1094 and 110, p. 366 and to Section 116-20 General Code, which shall produce Company Net Income not exceeding that found herein to be fair and reasonable as of June 30, 1925, in order that Commission may thereupon determine portion of increased rates so collected which were unreasonable and in excess of just and reasonable rates and charges for said service, and directing The Ohio Bell Telephone Company, at time of filing [prescribed]* aforementioned schedule to to report to Commission amounts collected under bond from each exchange and intrastate toll service, in excess of amount which should have been collected had no increase been charged for each year since effective date of several increases, etc. The Company at same time to submit original and present grouping of its several exchanges and rates established for scheduled service furnished by each before protested advances in rates directing Ohio Bell Telephone Company to begin and prosecute with all due diligence repayment to subscribers and patrons entitled thereto, as provided by law, such portions of increased rates, joint rates, toll classifications, charges or rentals collected by said utility, from effective date of said increases and for years 1925, 1926, 1927, 1928, 1929, 1930, 1931, and 1932, inclusive, found to have been unreasonable and excessive, with six per cent. interest from date of payment by customer to date of repayment by utility; provided, if money ordered repaid shall not have been claimed by persons entitled thereto in one year from time due and payable, to be paid to Treasurer of County, etc. for benefit of General Fund and directing substitution of schedule of rates, etc., for all classes of intrastate furnished in the State of Ohio found to be just and reasonable for schedules now on file and jurisdiction retained for making further or other orders as may

* Matter enclosed in brackets, struck out in copy.

be necessary and proper in this and all proceedings consolidated herein and all pending proceedings to which Ohio Bell Telephone Company is party affecting rates and charges to be made by Ohio Bell Telephone Company for schedule service, not heretofore consolidated in this proceeding. To all of which orders, Ohio Bell Telephone Company excepts, exceptions noted of record. Copy served upon all parties in interest.

March 3, 1934. List of schedules in effect January 1, 1934 in exchanges, not collected under bond.

[fol. 943] March 9, 1934. Filed by The Ohio Bell Telephone Company, Protest and Application and Petition for Rehearing.

March 9, 1934. Finding and Order denying Protest, Application and Petition of The Ohio Bell Telephone Company a rehearing with respect to each and all of the matters and things decided and determined by the Findings and Orders of Commission entered in this cause on January 16, 1934 and on March 1, 1934. To which order of the Commission Company excepted and exceptions noted of record.

March 14, 1934. Filed in the Supreme Court, Petitions in Error, No. 24694, entire order of the Commission, and No. 24695, on Final Valuation.

April 17, 1934. Filed, with accompanying letters of said date (attached) Exhibit "Rate Revenue Data and Estimates required by Commission's Orders of January 16 and March 1, 1934."

July 5, 1934. Finding of Specific overcharges for exchanges covered by A. U. R. Proceedings years 1925-1932 exclusive and intrastate toll services 1925 and 1926 and directing refund, with 6% interest from date of payment by subscriber. Copy served upon Company and Mayors of each municipality named in schedule attached to order as notice to show cause, if any there be, why findings shall not be made final and order issued to same effect and ordering repayment of excess charges. Hearing therein assigned for Wednesday, August 1, 1934, at ten o'clock A. M. Hearing Room. Notice given.

July 9, 1934. Finding and Order upon Return filed April 17, 1934 by Ohio Bell Telephone Company in response to order of January 16, 1934 (available for examination at offices of Commission) of two revisions of existing schedules of rates, charges, tolls and rentals for all exchanges oper-

ated in the State of Ohio, application of which will not produce income in excess of that found by the Commission to be fair and reasonable, consisting of two statements: First, based on allocation of all excess earnings local exchange and intrastate toll service; Second: based on allocation of all excess earnings to local exchange service and granting to said Ohio Bell Telephone Company and each incorporated municipality in state where local exchange service is maintained and operated opportunity to show cause, if any there be in writing, by August 1, 1934, why further order shall not enter herein adopting and prescribing, and substituting said first or second suggested revisions of Ohio Bell Telephone Company's schedule of rates found by the Commission in order of January 16, 1934, to be excessive, unreasonable and unlawful and directing Ohio Bell Telephone Company to make refunders heretofore ordered herein. Copy served upon Mayor of each municipality wherein service is furnished by The Ohio Bell Telephone Company.

July 19, 1934. Entry directing service of copy of order to Prosecuting Attorney of following named counties as notice to residents of unincorporated communities herein set forth: Stark County—Hartville and Marlboro; Erie County—Castalia; Jefferson County—Wintersville; Franklin County—Alton; Coshocton County—Conesville; Clark County—Pitchin; Mahoning County—North Lima and North Jackson and Portage County—Atwater.

[fol. 944] July 26, 1934. Filed by The Ohio Bell Telephone Company, Application and Præcipe for Subpœna duces tecum to E. W. Wood, Marion, Ohio, for hearing Wednesday, August 1, 1934 at ten o'clock A. M. Hearing Room.

July 27, 1934. Entry directing service subpœna duces tecum, in person, upon E. W. Wood, Marion, requiring attendance at hearing August 1, 1934, at 10:00 o'clock A. M.

July 31, 1934. Filed protest of the City of Ravenna.

July 31, 1934. Filed by The Ohio Bell Telephone Company following printed documents: 1—Application and Request of The Ohio Bell Telephone Company with respect to the Commission's Order of July 5, 1934; 2—Application and Request of The Ohio Bell Telephone Company with respect to the Commission's Order of July 9, 1934; 3—Verified Return of The Ohio Bell Telephone Company to the order to show cause contained in the Commission's Finding

and Order of July 5, 1934; 4—Verified Return of The Ohio Bell Telephone Company to the Order to show cause contained in the Commission's Finding and Order of July 9, 1934; 5—Protest and Application and Petition of The Ohio Bell Telephone Company for a rehearing of this cause; 6—Brief of The Ohio Bell Telephone Company on its written request that the Commission modify its findings and order with respect to the just and lawful rates to be charged respondent's present and future charged.

August 1, 1934. Session of hearing; recessed to August 3rd, at 12 o'clock noon.

August 3, 1934. Further hearing. Wood Exhibits filed: 21—Explanation of Method used in attaining Refundable Amounts shown in Commission's Order of July 5, 1934; 22—Summary of Corrected Allocation of $13,289,172. Excess Return found by Commission from 1925-1932. Company: Brett No. 9, Sheets 1-9, inclusive.

August 11, 1934. Filed, Protest, Application and Brief (Joint) of the City of Cleveland with respect to the Commission's Orders dated July 5th and 9th, 1934.

August 11, 1934. Filed transcript proceedings and testimony August 1-3, Examination E. W. Wood, p. 5822-5989, 167 p.

August 29, 1934. Filed by The Ohio Bell Telephone Company—Protest, Application and Petition of The Ohio Bell Telephone Company for Rehearing of this cause and of Commission's Order made herein August first, 1934, in respect to Commission's request of July 31, 1934, directed to Commission's order of July 9, 1934.

September 6, 1934. Finding and Order of the Commission upon the order made and entered herein as of date of July 5th, 1934, the objections and protests thereto, representations and showing made at said hearing and report dated August 11, 1934, with accompanying Exhibits of Special Investigator E. W. Wood, which report and exhibits hereby are made part of record herein. Finding: Application and Petition of The Ohio Bell Telephone Company asking, with respect to Finding and Order made and entered herein July 5, 1934, as aforesaid, sufficient cause has not been made to appear in said application and petition for such rehearing and same hereby is denied, exceptions of Ohio Bell Telephone Company taken and noted. Application and Request of The Ohio Bell Telephone Company the Commission dis-

closr to Respondent and afford opportunity to examine, analyze, explain and rebut certain information and introduce certain evidence, with respect to matters and things [fol. 945] decided and determined by Finding and Order dated July 5, 1934 overruled, the Commission having incorporated into record and accorded said respondent ample opportunity to examine and consider all necessary and pertinent information requested; exceptions Ohio Bell Telephone Company taken and noted; Verified Return: of Ohio Bell Telephone Company to show cause contained in Commission's Findings and Orders of July 5, 1934, and prayer thereof finds said prayer should be and hereby overruled—to which action The Ohio Bell Telephone Company excepted, exceptions noted of record. Excess Intrastate Toll Charges Collected under Bond, set forth in Order of July 5, 1934, the sums of $510,142 Year 1925 and $234,399 Year 1926 should be corrected to read $232,282.00 Year 1925 and $176,845.00 Year 1926. Ordered, The Ohio Bell Telephone Company hereby is notified, directed and required, within ninety days herefrom, to refund in case/or credit upon existing indebtedness to each subscriber and patron within ninety days herefrom to refund in cash or credit upon existing indebtedness to each subscriber and patron within each of communities enumerated in Exhibit A, appended to Finding and Order herein, the excess or proportion of excess or increase collected under Bonds duly given in A. U. R. Proceedings enumerated in Schedule A within each year set forth from year 1925 to and including the year 1932, as prescribed in Schedule A which hereby is made a part of this order, and to all patrons who used intratstate toll service within the State of Ohio in years 1925 and 1926, the total collection of $232,282.00 for the years 1925 and $176,845.00 for year 1926, in ratio of increased charges by The Ohio Bell Telephone Company to total excess collections made by it under bond for all intrastate toll service rendered by it individually and jointly with connecting companies together with six percentum interest from date of payment by respective subscribers and patrons of said excessive charges to date of such repayment; provided, that if any of such money so ordered repaid, including proportion of excess intrastate toll collections shall not be claimed by subscribers and patrons entitled thereto within one year from time same is due and payable in accordance with this

order, such unclaimed money shall be paid by The Ohio Bell Telephone Company to Treasurer of the County or other political subdivision in which said new schedule is effective, to benefit of its General Fund; all protests and objections to Finding of July 5, 1934, inconsistent with this order be and hereby same is overruled; to which order, objections of said parties were then noted and are here noted of record; and it appearing further that certain A. U. R. Proceedings consolidated in this proceeding for filing, prior to initial date for making of refunds as prescribed herein, it is Ordered, That The Ohio Bell Telephone Company, be and hereby it is notified, directed and required, within sixty days herefrom, to report to Commission amount of increase in rates which it collected from date of filing of its bond until January 1, 1925, in each exchange involved in A. U. R. Proceedings consolidated herein, instituted prior to January 1, 1925. Within thirty days after completion of such refunds, Ohio Bell Telephone Company to make verified report of same to Commission. Jurisdiction herein retained for making such audit or further order herein as may be necessary and proper in the premises.

September 7, 1934. Acknowle-gment of service of copy of order of Commission dated September 6, 1934.

[fol. 946] September 25, 1934. Filed Applica-*nt* and Request of The Ohio Bell Telephone Company with respect to the Commission's Order of September 6, 1934.

September 27, 1934. Finding and Order of the Commission in re: Application and Request of the Ohio Bell Telephone Company in re Commission's Order of September 6, 1934 as enumerated: No. 2. Introduction separate evidence Fair Value of Property as to Revenues, Expenses and Net Income for each proceeding wherein respondent is collecting rates under bond, and No. 3: To afford opportunity to examine, analyze, explain and rebut information and methods of application used by the Commission in arriving at its findings and order of January 6, 1934 in finding Material and Labor Cost Price*d* and Trends, etc., overruling same; respondent excepts, exceptions noted of record, and No. 1: Instructions to Accountant E. W. Wood, finds no special instructions were given, other than at open hearing, to which no objections were made by counsel for respondent and his report (made part of the record herein by order of September 6, 1934, upon which respondent and

other parties of interest examined and cross-examined him; Commission overrules, respondent excepts, exceptions noted of record. Copy served upon The Ohio Bell Telephone Company.

October 1, 1934. Filed by The Ohio Bell Telephone Company, Application for a stay, postponement and suspension of enforcement of the orders of the Commission. Filed by The Ohio Bell Telephone Company, Protest, Application and Petition for Rehearing of cause.

October 5, 1934. Filed by the City of Cleveland, Application for Rehearing with respect to the order of September 6, 1934.

October 19, 1934. Entry overruling Protest, Application and Petition of Ohio Bell Telephone Company for Stay, Postponement and Suspension of Enforcement of the orders of the Commission issued January 16, March 1st, July 5, July 9 and September 5, 1934. Exceptions of the Ohio Bell Telephone Company taken and noted.

October 19, 1934. Entry denying Application for Rehearing in respect to the Findings and Orders of the Commission issued January 16, March 1st, July 5, July 9, and September 6, 1934, exceptions taken and noted.

October 25, 1934. The Commission having under consideration schedule of rates and charges to be established and maintained by respondent, Ohio Bell Telephone Company, local exchange service, Cleveland, Ohio, Exchange Area, now served by measured service only, the Commission Ordered, said The Ohio Bell Telephone Company, within twenty days from date of service of order herein to file as substitute, or alternative for present schedule for measured service, a suggest- schedule of flat rates for local exchange telephonic service Cleveland, Ohio, Exchange Area, earning a net income not in excess of that found in Finding and Order made and entered herein March 1, 1934, to be fair and reasonable as of June 30, 1925, for local exchange service in Cleveland Exchange Area.

October 27, 1934. Filed in Supreme Court, Error Proceeding Ohio Bell Telephone Company vs. P. U. C. O. No. [fol. 947] 25065—To review Finding and Order of The Public Utilities Commission of Ohio of September 6, 1934, in Cause No. 3307 and Application for Stay and Suspension

of such Order. To be heard November 8, 1934, at two o'clock P. M. or as soon thereafter as Court will hear same. Service of same acknowledged by Chairman E. H. Hopple.

November 2, 1934. Compliance Ohio Bell Telephone Co. to Commission's Order of September 6, 1934.

November 5, 1934. Filed Error Proceedings in Supreme Court No. 25076 City of Cleveland vs. P. U. C. O. Order of September 6, 1934.

November 8, 1934. Entry of Commission denying Application City of Cleveland for Rehearing with respect to matters decided by Finding and Order made and entered herein September 6, 1934; exceptions City of Cleveland taken and noted.

November 10, 1934. Filed Verified Response of The Ohio Bell Telephone Company to the Commission's Order of October 25, 1934, directing filing of Suggested Schedule, flat rate service Cleveland, Ohio, denying right of Commission, etc.

November 21, 1934. Finding and Order of Commission upon failure of Ohio Bell Telephone Company to submit information, facts and data required by its Order of October 25 and requiring said The Ohio Bell Telephone Company within a twenty-day period to fully comply with said order of October 25, 1934, and furnish for alternative for present schedule for measured service Cleveland Area suggested schedule for flat rate service, calculated insofar as revenues are concerned upon basis of data furnished to this Commission on April 17, 1934, for year 1925, i. e. One schedule based upon revenue applicable to both exchange rates and intrastate toll rates (p. 23), producing equivalent revenue for year 1925, as shown in Column "B" of said Return filed April 17, 1934, to wit: the sum of $10,093,685 and $10,040,982 respectively, and to furnish statement showing for year 1925 number of Subscriber Stations, P. B. X. Trunks, etc., and Classification, Business, Residence, Independent and Party Line. Copy served upon Respondent by Registered Mail.

December 11, 1934. Filed by The Ohio Bell Telephone Company Verified Response to Commission's Order of November 21, 1934.

January 23, 1934. Entry transmitting papers to the Clerk of the Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. H. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this twenty-third day of January, 1935. C. H. Knisley. [Seal.]

[fol. 948] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 2367 S-1

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Lancaster, Ohio

1922

Jan. 23. Supplemental Application, Numbered S-1, for order fixing rates for unified service at Lancaster, Ohio, filed.

Jan. 24. Entry assigning hearings on supplemental applications S-1, for Monday, February 13, 1922 at one thirty o'clock p. m. C. S. T., at hearing room in State Office Building, Columbus, Ohio. Notice to parties given.

Feb. 13. Hearing held on Supplemental Application, S-1 (Lancaster). Exhibits filed. Cooper—1, Estimated Cost to Unify Service; 2, Statement of Operations for Year Based on Nine Months ending September 30, 1921 (after unification sheets); 3, Subscribers Station Revenues; 4, Schedule P. U. C. O. No. 6; Williams—1, Appraisal, Reproduction New; 2, Percentage Statistics; 3, Estimated Reproduction New; 4, Estimated Present Condition after Unification; 5, Depreciation of Plant and Equipment; 6, Appraisal; 6-A, Cost of Establishing Business; 7, Percentage Statistics (same as 2); further hearing recessed to March 17, 1922, at ten o'clock a. m.

Feb. 17. Transcript proceedings and testimony in re Lancaster (S-1) 63 p., filed.

March 17. Hearing in re unified service rates, Lancaster S-1 completed and exhibit, resolution No. 237, City of Lancaster, filed.

March 20. Transcript proceedings and testimony filed. 88 p. Lancaster S-1.

April 13. Filed by The Ohio Bell Telephone Company in Lancaster (S-1). Proceedings, exhibits, 2 sets (1 plate each) Bell Cable Maps; two sets (8 plates each) Bell City Toll Maps; 2 sets (3 plates each) O. S. Cable Maps; 2 sets (7 plates each) O. S. City Toll Maps; 2 sets (4 plates each) Bell Rural Toll Maps; 2 sets (3 plates each) O. S. Rural Toll Maps.

1923

April 13. Filed by telephone expert. Detailed valuations, Lancaster S-1 exchanges.

Aug. 20. Entry certifying tentative valuations of Bell Division—Lancaster S-1 as of October 28, 1920 and of Ohio State Division—Lancaster S-1, as of January 3, 1922.

Aug. 20. Entry certifying tentative valuations Lancaster S-1, served by registered mail upon the Company and Mayor Lancaster; R.R. 44417-18.

1924

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding No. 3307.

[fol. 949] Before Public Utilities Commission of Ohio

No. 2367. S-12

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Massillon, Ohio

1922

Apr. 20. Filed. Supplemental Application, The Ohio Bell Telephone Company for order fixing rates to be charged

for unified service within exchange area, Massillon, designated S-2; assigned for hearing Friday, May 26, 1922, at nine o'clock a. m. C. S. T. Hearing Room. Notice given to Mayor and City Solicitor.

April 26. Assignment of hearing in re Massillon for May 26, 1922, vacated and reassigned for Friday, June 9, 1922, at nine o'clock a. m. C. S. T. Hearing room. Notice given.

June 9. S-12, Massillon, hearing in re rates for unified service, called for hearing this day, upon telegraphic requests of the Mayor, City of Massillon and consent of applicant, hearing continued to Wednesday, June 21, 1922, at 12:30 o'clock p. m. C. S. T. Hearing room. Notice given.

June 20. By agreement of parties, assignment of hearing June 21, 1922, vacated and said hearing reassigned for Wednesday, July 12, 1922, at nine o'clock a. m. C. S. T. Council Chamber, City Building, Massillon, Ohio in re S-12 unified service rates, City of Massillon.

July 18. Massillon S-12, hearing. Filed transcript of proceedings and testimony (52 p.) with exhibits Cooper 1, Estimated Cost to unify service; 2-1, Statement 1 year's operation; 2-2, Income for one year, combined property; 2-3, Operating Revenues; 2-4, Operating Expenses; 2-5, Exchange Revenues after Unification; 3, P. U. C. O. No. 8, Original Sheets 1, 2, 3 and 4; 4, Monthly Rates for Service; Williams 1, B Exchange; 2, Comparison actual and appraisal costs; General Office Equipment; 3, Same, Distribution System Ex. Pole Line; 4, Ex. Aerial Cable construction; 5, Same, Ex. Aerial Wire Construction; 6, Same, Ex. U. G. Conduit Construction; 7, Same, Ex. U. G. Cable Construction; 8, Net Additions to Plant and General Equipment; by Classes; 9, Appraisal B. Exchange Percentage Sheet; 10, S. Exchange; 11, Percentage Sheets; 12, Estimated Reproduction Costs; 13, Estimated Present Condition after Unification; 14, Depreciation Plant and Equipment; Schneider, 1, Cost of Establishing Business Unified Telephone Properties.

July 18. Protest of Mayor on behalf City of Massillon filed at hearing delivered by Court Stenographer.

Aug. 10. Further hearing in re Unified Service Rates, Massillon S-12 assigned for Tuesday October 10, 1922, at ten o'clock a. m.

Oct. 9. Upon application City of Massillon and good cause shown, further hearing on unified service rate assigned for hearing October 10, 1922, vacated, continued to

Tuesday December 12, 1922, at ten o'clock a. m. C. S. T. Hearing Room. Notice given.

Dec. 8. Upon application City Solicitor, Massillon, Ohio, and good cause shown, assignment of hearing S-12, Massillon, December 12, 1922, vacated and said hearing reassigned for Tuesday, February 13, 1923, at ten o'clock a. m. C. S. T. Notice given.

1923

Feb. 13. Session of hearing S-12, Massillon. City's exhibit No. 1, Inventory and valuation as of November 1, 1922, filed; hearing recessed to March 13, 1923 at ten o'clock a. m.

Feb. 13. Transcript proceedings and testimony S-12, Massillon, 119 p. filed.

[fol. 950] March 13. Session of hearing in S-12, Massillon held. Williams Exhibit No. 15, Analysis of Unit Costs B. Exchange Appraisal (3 p.) offered and introduced. Hearing recessed to Thursday April 12, 1923 at nine o'clock a. m. C. S. T. at hearing room, State Office Building, Columbus, Ohio.

March 24. Filed. Transcript proceedings and testimony in re S-12 Massillon hearing held March 13, 1923, filed. (27 p.).

April 10. Upon joint application of the parties further hearing on S-12, Massillon continued from April 12, 1923 to Wednesday, May 16, 1923, at 9 a. m. C. S. T. at hearing room. Notice given.

May 16. Session of hearing on S-12 Massillon. Exhibits offered and introduced; City's No. 2, Items of Toll property carried in appraisal (3 sheets) No. 3, Indirect Costs (3 sheets) and No. 4, Comparison of Unit prices in appraisals.

May 28. Filed. Transcript of proceedings and testimony S-12, Massillon (p. 147-207).

July 25. Supplemental order No. 12, Fixing Rates for unified service, Massillon, Ohio Exchange Area.

Aug. 2. Application for rehearing. Massillon S-12, filed, by City of Massillon.

Aug. 20. Entry granting city of Massillon S-12 rehearing with respect to things and matters determined by Supplemental Order S-12, issued July 25, 1923. Pending rehearing said Supplemental Order suspended and assigning same for Friday October 5, 1923, at ten o'clock a. m. C. S. T. hearing room. Notice given.

Aug. 23. Filed, motion to correct journal entry in S-12, Massillon by Counsel for said City.

Oct. 5. Rehearing, in part, Massillon S-12; entry suspending order dated July 25, 1923 and suspending further hearing assignment pending certification tentative valuation.

Oct. 8. Transcript proceedings and testimony taken October 5, 1923, Massillon, S-12, (8 p.).

Dec. 12. Filed, by telephone expert, summary sheet in re tentative valuation Massillon, S-12.

Dec. 27. Massillon, S-12, entry fixing tentative valuation as of April 20, 1923.

Dec. 27. Entry fixing tentative valuation served by registered mail upon Mayor, Massillon and Attorney Ohio Bell Telephone Company, R. R. No. 77433-34.

1924

Jan. 30. S-12, Massillon, Tentative valuation having become final by law, proceeding assigned for further hearing as to rate of return Tuesday, March 11, 1924 at ten o'clock a. m. C. S. T. Hearing room.

Mar. 1. 2367—S-12, Massillon, filed, Agreed stipulation, testimony taken in A. R. P. No. 124, Toll Service License Contract between The Ohio Bell Telephone Company and The American Telephone and Telegraph Company shall be included and become part of record in this proceeding.

Mar. 11. S-12, Massillon—A further hearing; continued to May 14, and 21, 1924.

Mar. 31. S-12, Massillon—Filed, transcript proceedings and testimony taken March 11, 1924 (p. 218-233).

April 8. Filed, Transcript proceedings and testimony A. U. R. P. No. 124, Long Distance Toll Rates in stipulated cases, S-12, Massillon; 591 p. being the evidence adduced at hearing February 24, 1924 to February 29, 1924, inclusive. [fol. 951] Apr. 16. Filed transcript proceedings and testimony A. U. R. P. 124, Long Distance Toll Rates in stipulated case S-12, Massillon, 299 p. being evidence adduced at hearing March 25-28, 1924 inclusive, 299 p.

May 14. S-12, Massillon, Session of hearing; Exhibits filed, Schneider 2 and 3—Hanna 1-A, 1-B, 1-C and 1-D; Hanna 2-A, B, C and D, recessed to May 23, 1924.

May 22. S-12 Massillon, Transcript proceedings and testimony filed—84 p. taken May 14, 1924.

May 23. S-12 Massillon, Session of hearing. Exhibits filed, Thomas 1 and 2; Johnston Exhibit No. 1.

June 16. S-12, Massillon, Transcript proceedings and testimony filed May 23, Hearing. (p. 320-361).

Nov. 7. By order of Commission further proceedings herein consolidated with proceeding 3307.

[fol. 952] Before Public Utilities Commission of Ohio

No. 2367. S-17

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Dayton, Ohio

1922

June 1. Supplemental Application, The Ohio Bell Telephone Company, S-17, for order fixing rates for unified service, Dayton, Ohio, Ex. Area filed; assigned for hearing Friday June 23, 1922, at 9 o'clock a. m. C. S. T. Hearing room. Notice given.

June 20. It appearing from oral statements of executives of Company, hearing may not be completed in one day, assignment of hearing, Dayton rates June 23, 1922, vacated and said hearing reassigned for Tuesday, June 27, 1922, at 9 o'clock a. m. C. at Montgomery County Probate Court room in the Court House, City of Dayton, Ohio.

June 27-28. Hearing held in re S-17, City of Dayton, at Dayton, Ohio. Filed Protest City of Dayton to proposed rates filed.

July 8. Transcript proceedings and testimony taken at Dayton, June 27 and 28, 1922, S-17 in re rates for unified service (134 p.) with exhibits filed; Exhibits Real Estate Board with 2 Certificates of Valuation, Lowes 1, Appraisal 2 sheets; 2, Condensed Summary and Detailed Estimate; Davis 1, Ohio State, Eastwood Exchange, Estimated Value; Williams 1, Appraisal, Dayton Ohio Bell B. Exchange; 2, Comparison Actual and Appraisal Cost, Central Office Equipment; 3, Same distribution system, Ex. Pole Line; 4,

Same, Aerial Cable Construction; 5, Same, Aerial Wire Construction; 6, Same, Underground Conduit Construction; 7, Same, Underground Cable Construction; 8, Chart; 9, Expenditures for Plant Construction; 10, Interest during Construction; 11, Net Additions to Plant; 12, Percentage Appraisal B. Exchange; 13, Gross Additions to Plant, 5 year period; 14, Appraisal S. Exchange; 15, Percentage Appraisal, S. Exchange; 16, Estimated Reproduction Cost, New after unification of service; 17, Estimated Present Condition; 18, Plant and Equipment Depreciation; Cooper 1, Cost to Unify Service; 2, Statements 1 to 5 inclusive; 3, P. U. C. O. No. 5, Sheets 1, 2 and 3; 4, Monthly Rates for Service; Schneider 1, Cost of Establishing Business.

Aug. 15. Further hearing in re unified service rates, Dayton S-17, assigned for Tuesday, November 14, 1922 at ten o'clock a. m. C. S. T. Hearing room. Notice given to City Solicitor.

Nov. 13. Application for continuance filed by The Ohio Bell Telephone Company and the City of Dayton, Ohio.

Nov. 13. Entry assigning Wednesday, December 20, 1922 at ten o'clock a. m. C. S. T. as time for introduction of further testimony by The Ohio Bell Telephone Company and Tuesday, January 16, 1923 at ten o'clock a. m. as the time for introduction of evidence by the City of Dayton in S-17, City of Dayton.

Dec. 20-21. Sessions of hearings S-17, Dayton Company's further hearing, Exhibits filed. Howell 1, Revenue and Expense Statement year ending September 30, 1922; 2, Income Statement November 30, 1921; Sloan 1, Cost of Reproduction of Business; 2, Report Cost of Reproduction—A—Key Map, Dayton.

1923

Jan. 22. Filed. Transcript proceedings and testimony, Dayton S-17, hearing held December 20 and 21, 1922, 138 pages.

[fol. 953] Jan. 16-19. Further hearing in re unified service rates, Dayton S-17; Recess taken to Thursday, March 8, 1923, at 10 o'clock a. m. Exhibits filed by City to No. 36, taken away by party complainant—No. 36, Engineering organization; No. 37, Property Not Used and Useful for telephone purposes; U. G. Conduit System; No. 38, State Ex. property appraisal, Deductions for Non-usefulness; No. 39,

Comparisons of Expenses; 40, Switchboard facilities as of October 1922.

March 8-9. Further hearing in re Dayton S-17, unified service rates; recessed to Monday, April 23, 1922 at one thirty o'clock p. m. Exhibits filed. City of Dayton—30, Estimate Cost of Main Exchange Building; 31, East Exchange Building; 32, Fairview Exchange Building; 33, Ohio State Main Exchange Building; 34-1, Ohio State Eastwood Exchange Building; 34-2, Eastwood Exchange, Comparison Unit Price on Material; 34-3, Same, on Labor; 34-4, Same; Average Unit Cost for Labor and Material; 40, Plan Aerial Lead Sheath Cable and Underground Conduit; 41, Planned New Annual Charges against the Public; 42, Appraisal The Ohio Bell Telephone Company Bell Exchange as of January, 1923; Brownell and Wagner; 43, Same Ohio State Exchange; 44, Reproduction Cost New State and Bell Exchanges; 45, Estimate Cost to Unify and make necessary additions; 46, Reproduction Cost New after unification; 47, Estimated present condition after unification; 48, Study of size, etc. Cooper (Companys Exhibits) 8, Record P-342—Gross Expenditures; 5, Detail of $87,482.32 record page 296, 322, 323, 2 sheets; 6, Statement of Maintenance, 5 p. record P 327; 7, Income Statement 12 p.—record p. 39;

March 19. Filed. Transcript proceedings and testimony, Dayton S-17 taken March 8 and 9, 1923, filed, 132 p.

March 21-22. Further hearing in re Dayton. Recessed to April 23, 1923, at one thirty o'clock p. m. Exhibits filed. City of Dayton at hearing March 21 and 22, 1923, p. 53. Nos. 49—O. B. Present Value in Percent; p. 57-50, Same O. S. Exchange; 51—Value for Rate Making Purposes O. S. and O. B. Ex. p. 63; 52, Same p. 64; 53, Same S. & B. Exchanges of O. B. p. 64-a; 54, Book Cost C. U. T. Co.; 55, Book Cost Cleveland Telephone Company; 56, Book Cost O. S. Telephone Company; 57, Same, O. B. Telephone Company; 58, Depreciation Reserved C. U. T. Company; 59, Depreciation Reserve O. S. Telephone Company; 60, Depreciation Reserve, Cleveland Telephone Company and The Ohio Bell Telephone Company; 61, Depreciation Study—Companies record, 4 p.; 62, Analysis of property retired C. U. T. Company, year 1919, 9 sheets; 63, Average Life, Dayton Exchange O. B. T. Company after unification—3 pages; 64, Depreciation Study, Citizens Telephone Company, Grand Rapids, Michigan; 65, Same, Michigan State

Telephone Company; 66-1, Study Revenues and Expenses C. U. T. Company, 1912-20; 66-2, Home, O. S. & A. T. & T.; 66-3, Cleveland Telephone Company, operating 1912-20 and O. B. T. Company 1920-21; 66-4; Estimated Cost of Service and Equipment; 66-5, Same, A. T. & T. Company to Cleveland Telephone Company, 1904-19, O. B. T. Company 1920 and 1921; 66-6, Estimated Cost to A. T. & T. Company for Special Consulting Service; 66-7, Same, Cleveland Telephone Company; 66-8, Operating Statement C. U. T. Company, 1912-20; 66-9, Same, Home Telephone Company, 1913-14 and O. S. T. Company, 1915-21; 66-10, Same, Cleveland Telephone Company, 1912-19; Ohio Bell Telephone Company 1920-21; 66-11, Accumulated Surplus and Deficit Record C. U. T. Company, 1912-19; 66-12, Same, O. S. 1915-21; 66-13, Book Cost O. S. T. Company, Corrected Statement; 66-14, Reproduction Cost O. S. T. Company July 1914; 66-15, Recapitulation properties entering into O. S. merger 1923; 66-16, a, comparison unit costs, Cuyahoga and Toledo properties, O. S. T. Company. 66-16, b, [fol. 954] Same; 66-16, c, Same; 66-17, Increased Unit Cost, Toledo O. S. T. Company as compared with Cuyahoga Telephone Company; 66-18, Accumulated Surplus and Deficit Record, Cleveland Telephone Company, 1912-20, O. B. T. Company 1920-21; 66-19, Summary of Accumulated Excess and Deficit 12-31-21; 67, Book Values, etc. Sheets 1 to 29; 68, Summary Values for Rate Making Purposes, Dayton, O. B. and O. S. after unification and net additions completed, 2 p.; 69, Prospective minimum average cost of money; 70, Study fair rate of return; 71, 2 p., Yield on Bond and Note issues; 72, Proper Financial Plan; 73, Sheets 1 to 4 proposed Tariff Dayton Exchange, O. B.; 74, Comparison present monthly rates, Company and City; 75, Detailed Statement of Revenue Rates, Proposed by City; 76, Operating Revenues one year after unification and net additions to property completed; 77, Same; 78, Detailed comparison operating statements, Sheets 1 and 2; 79, Comparison Operating Statistics, Sheets 1 and 2; 80, Income Statement, O. B. Company one year after unification and net additions; 81, Operating Statements; 82, Same; 83, Dayton Franchises of Telephone Company.

April 4. Transcript of testimony and proceedings S-17 (Dayton) pages 707-838, filed.

April 23. Hearing on S-17, (Dayton) application, as-

signed for this day, passed to April 24, 1923 at 9 o'clock a. m. C. S. T. at hearing room.

April 24-25-26-27. Sessions of hearing on S-17, (Dayton) application. Exhibits offered identified and introduced: Company's A and B, Photographs of flood damage: D-1 to D-27 Approved Estimates (All identified): City's 84, Credits to Surplus, C. U. Telephone Company, 1920; 85, Statement of Depreciation (Objection to Introduction Sustained); 43-A, Repro. and Present Costs "Bell" Ex.; 43-B, Same, "State" Ex.; 82a, Operating Statement; 40-B, Map Aerial Cable and U. G. Conduit; 86, Map Aerial Plant, Distribution System; and 87, Book of Photostatic copies of maps (withdrawn for checking). Further hearing recessed to Monday, June 18, 1923, at one thirty o'clock p. m. at hearing room.

May 18. Transcript of proceedings and testimony in S-17 (Dayton), filed. (Page 839-1160 incl.)

May 18. Filed in S-17, Dayton, by stenographer. Copy of letter dated April 22, 1913 to Mr. Frank A. Davis.

June 18-19-20-21-22. Sessions on S-17 (Dayton). Exhibits offered and introduced: Companys, F, Plate of 2 cuts; G, Plate 1 cut; H, Plate 1 cut (upright), and I, Plate 1 cut. Citys, 38-A, S. Exchange, Deductions for non-usefulness; 87, Outline of Automatic Plan; 88, Estimated Maintenance and Traffic Expenses; 89, Plan for substituting Automatic for Manual Equipment; 90, State Pole Lines; 91, Map; 61-A, (Depreciation Study) and 61-B (Same) in substitution for 61.

July 2. Transcript of proceedings and testimony S-17 (Dayton), page 1161-1434, inc.

July 2-3-5 & 6. Sessions of hearing S-17 (Dayton), Exhibits filed. 92, Construction Additions to Bell Plant; 93, Estimate Manual Switchboard Equipment; 94, Statement, Effect of Scrapping; 95, Comparison New Automatic Central Office Equipment and Proposed Manual Equipment; 96, Approximate depreciable property constituent companies; 38-A, State Exchange Property Appraisal—Deductions for non-usefullness; Company—Williams, 19-19A —29 inclusive, Blue print maps; 20, Revised Summary of Appraisal—Detail Ex. pole lines B. Exchange; 21, Same, S. Exchange. Joint Exhibit No. 1—Uniform System of Accounts Telephone Companies I. C. C.

July 30. Filed, transcript proceedings and testimony taken at hearing July 2, 3, 5 and 6. S-17 Dayton, p. 213.

[fol. 955] 1924

Jan. 10. S-17 Dayton, Application in re rates assigned for further hearing Wednesday, February 20, 1924 at ten o'clock a. m. C. S. T. Hearing room. Notice given.

Feb. 20-21. S-17 Dayton, Sessions of hearing filed, City Exhibits 97, General Comment on Errors; 98, Comment Schneider's Method Analysis Toledo Appraisal; 99, Schedule of Poles from Home Telephone Company.

Feb. 25. 2367-17, Dayton. Filed, Separate stipulations agreeing testimony taken in A. U. R. P. No. 124 involving rate and charges Ohio Bell Telephone Company Toll Service between points State of Ohio in re license contract between The Ohio Bell Telephone Company and the American Telephone & Telegraph Company shall be included and become part of record in proceeding 2367-17.

March 3. 2367 S-17, Dayton, Transcript proceedings and testimony taken February 20, 1924, page 1649-1778.

March 27. S-17, Dayton. Upon application of counsel City of Dayton, Ohio and consent counsel, Ohio Bell Telephone Company, assignment further hearing April 7, 1924 vacated, reassigned for Monday May 5, 1924, 12:30 o'clock p. m. C. S. T. hearing room.

April 8. Filed. Transcript proceedings and testimony, A. U. R. P. No. 124, Long Distance Toll Rates in stipulated case S-17, Dayton, 591 pages, being the evidence adduced at hearing February 24, 1924 to February 29, 1924, inclusive.

April 16. Filed. Transcript proceedings and testimony, A. U. R. P. No. 124, Long Distance Toll Rates in stipulated case S-17, Dayton. 299 pages, being evidence adduced at hearing March 25, to 28, 1924, inclusive.

May 5-8 inc. S-17, Dayton. Hearing held. Exhibits filed by City of Dayton. 100, Life of Local Central Switchboards, and Kositzky, Ex. A, Ohio 14 Federal Census.

May 29. S-17, Dayton. Transcript proceedings and testimony filed May 5 to 8th hearing, page 1779-2079.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding No. 3307.

[fol. 956] Before Public Utilities Commission of Ohio

No. 2367. S-18

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Canton, Ohio

1922

June 9. Filed. Supplemental application The Ohio Bell Telephone Company for order fixing rates for unified service, City of Canton, Exchange Area (S-18); assigned for hearing, Monday, June 26, 1922 at 12:30 o'clock p. m. C. S. T. Hearing Room. Notice given.

June 16. Upon application City Solicotor of Canton and good cause shown, assignment of hearing, June 26, 1922, vacated; July 27, 1922 reserved for such hearing pending arrangements for suitable hearing room at Canton, Ohio, in re unified service rate Canton S-18.

June 20. Entry reassigning hearing Canton rates for Thursday, July 27, 1922, 9 o'clock a. m. C. S. T. Council Chamber, City of Canton, Ohio.

July 13. Protest, The Stark County Farm Bureau against increased rates, Canton S-18 Area, filed.

July 27. Hearing held in re unified service rates Canton S-18.

Aug. 2. Filed by stenographer exhibits produced at hearing S-18, Canton, July 27—Real Estate Board at Canton, report of appraisal, Sheets 1 and 2. Tilden detailed estimates 1—Ohio Bell Telephone Co., 2, Ohio State Tel. Co. Cooper 1, Estimate cost unification of service; 2, Operations, 1 year combined properties; 3, Schedule Canton, North Canton, Magnolia, Hartville, Louisville. Schneider 1, Cost of Establishing Business, unified properties Canton, Hartville, Louisville and North Canton; Cooper, 4, Monthly Service Rates, Canton Exchange; Williams 1, Appraisal B. Exchange; 2, Comparison—Actual and Appraisal Costs; Central Office Equipment; 3, Same, Distribution System,

Exchange Pole Line; 4, Exchange Aerial Cable; 5, Aerial Wire; 6, U. G. Conduit; 7, U. G. Cable; 8, Percentage Summary; 9, Net Additions to Plant and Equipment; 10, Canton S Exchange; 11, Percentage summary; 12, Appraisal, Hartville B. Exchange; 13, Percentage Summary, Hartville; 14, Hartville Net Additions to Plant; North Canton—15—Appraisal; 16, Percentage Summary; 17, Net Additions, Louisville; 18, Appraisal; 19, Percentage Summary; 20, Net Additions; 21, Estimated reproduction cost new; 22, Estimated per cent condition; 23, Depreciation of Plant and Equipment.

Aug. 10. Further hearing in re: unified service rates, Canton—18, Friday September 22nd, 1922, at nine o'clock a. m. at the hearing room of the Commission, Columbus, Ohio.

Sept. 18. Upon application City of Canton and good cause shown, assignment of hearing Sept. 22, 1922, vacated; reassigned for hearing Tuesday November 21st, 1922 at ten o'clock a. m., C. S. T. Hearing Room, Notice Given.

Sept. 28. Resolution adopted by Canton City Council September 25, 1922, in re: Service Conditions, filed.

Nov. 21. Upon application City of Canton and good cause shown, assignment of further hearing November 21, 1922, vacated and same reassigned for Tuesday, January 30, 1923 at ten o'clock a. m., Hearing Room, Notice Given.

1923

Jan. 19. Assignment of hearing unified rates S-18, City of Canton, January 30, 1923, vacated; reassigned for Tuesday, March 6, 1923, at ten o'clock a. m., C. S. T. hearing room. Notice given.

March 6-7. Further hearing in re: Canton unified service rates recessed to Wednesday April 18, 1923, at ten o'clock a. m. Canton exhibits filed March 6 and 7, 1923. Cooper 5—Statement of operations, 1921, statements A, B, C, D, and E; 6, Same, 1922, Statement A, B, C, D; 7, Gross and Net Additions to Plant, 5 p.; 8, Number of company stations, 1912, to 1922, inc. 3 p.

[fol. 957] March 20. Filed transcript proceedings and testimony, S-18, Canton, taken March 6, 1923, 159 p.

April 13. By agreement of parties further hearing on S-18, Canton, continued from April 18, 1923, to Thursday, May 17, 1923, 9 A. M. C. S. T. at hearing room, Notice given.

May 17-18. Sessions hearing S-18, Canton, held and further hearing recessed to Monday, July 23rd, at 12:30 o'clock p. m., C. S. T. at hearing room. Exhibits offered and introduced: Tilden A—Estimated value based on average costs "B" plant; B—Same "S" Plant; Wagner #1, Summary "B" value; #1A, Appraisal, "B" plant; No. 2, per cent Present Value, "B" plant; No. 3, Repro. and Present Values "B" plant; 4, Summary "S" Value; 4A—Appraisal "S" plant; 5, Per cent Present Value "S" plant; 6, Repro. and Present Value "S" plant; 7, Same both plants; 8, Estimate cost to unify; 9, Estimated value unified plant; 10, Same present value; 11, value for rate making unified plant; 11A, Same; 12, Book Cost, etc., C. U. T. Co. (24 sheets) and 13, Revenues and Expenses, C. U. Tel. Co. etc., (21 sheets); Brownell No. 2—Map, Aerial Sheath Cable, etc., Canton. Brownell 1 and 3, introduced, withdrawn for purpose of copying.

June 5. Transcript of proceedings and testimony on S-18, Canton, filed. Page- 241-400.

July 12. Filed S-18 Canton, Exhibit Estimates Repro. Cost as of May 18, 1923.

July 18. S-18. Upon application city solicitor, Canton, Ohio, and with consent Counsel O. B. T. Co. and good cause shown, assignment for further hearing July 25, 1923, vacated; said hearing reassigned for Monday August 6th, 1923, at 1:30 o'clock p. m. C. S. T. Council Chamber, Canton, Ohio; provided such hearing shall not be called until completion of hearing in proceeding 2862, assigned for same time and place.

December 13. Canton—S-18. Further hearing on supplemental application assigned for hearing Wednesday, Jan. 2, 1924 at 10 o'clock a. m., C. S. T. hearing room, Notice Given.

1924

Jan. 7 and 8. Sessions of hearing Canton S-18 recessed taken to Wednesday Jan. 16, 1924, 10 o'clock a. m. Exhibits filed Jan. 7 and 8, 1924. City of Canton: Johnston A, Map poles. 1, Pole Inventory 8p.; 2, Excess poles in percentage, City; 3, Same, Rural Poles; 4, Original State Poles, 5 p. Wagner, 11-B Street Map City of Canton; 13-1-A, Revenues and Expenses; 13-3-A, Analysis Cleveland Telephone Company Operating Sheet, 1912-1920 and The Ohio Bell Telephone Company, 1920-1921; 13-4-A, Esti-

mated Cost of Telephone Equipment as rendered A. T. & T. Company to C. U. T. Company 1904-1920; 13-5-A, Estimated Cost Service for Telephone Equipment, A. T. & T. to C. T. Co. 1904-1919, O. B. T. Company, 1920-1921; 13-6-A, A. T. & T. Company, special consulting service, C. U. T. Company, 1912-19; 13-6-B, Estimated Cost, A. T. & T. Company, Special General Service Organization; 13-7-A, A. T. & T. Company, Special Consulting Service, Cleveland Telephone Company, 1912-19; O. B. T. Company years 1920-21; 13-8-A, Operating Statement C. U. T. Company 1912-20; 13-10-A, Same, Cleveland Telephone Company, 1912-19, Ohio Bell Company, 1920-21; 13-11-A, Accumulated Surplus and deficit record C. U. T. Company, 1912-19; 13-20-A, Same, Cleveland Telephone Company, 1912-20, Ohio Bell Telephone Company, 1920-21; 13-21-A, Summary accumulated excess and deficit, December 31, 1921; 14, Book Value various Companies of the Ohio Bell Telephone Company; 15, Value for Rates making Purposes, O. B. T. Company, December 31, 1921; 16, Same; 17, Stations of Companies and Exchanges Reports to P. U. C. O.; 18, Rate Study; 19-1-4, Proposed Local Exchange Tariff after Unification S. & B. Exchanges; 20, Comparison Present and Proposed Rates; 21, Detailed Revenue Proposed Rates; 21—1 & 2, Appraisal Hartsville Exchange; 23—1 & 2, Same, Louisville Exchange; 24, 1 & 2, Same, North Canton; 25, 1, 2, 3 & 4, Proposed Exc. Tariff Hartville; 26—1, 2, 3 & 4, Same, Louisville Exchange; 27—1, 2, 3 & 4, Same, North Canton; 28, Detailed Statement Revenues as Proposed by City of Canton, Hartsville Exchange; 29, Same, [fol. 958] Louisville Exchange; 30, same, North Canton; 31-1, Operating Revenues, Canton Ex. Area; 31-2, Estimated Revenue Requirements, Canton Area; 31-3, Operating Statement; 31-4, Income Statement; 31-5, Operating Revenues; 31-6, Estimated Revenue Requirements after Unification; 32-1, Operating Revenues, Hartville; 32-2, Revenue Requirements, Hartville, Louisville, and North Canton; 32-3, Operating Statement, Hartville, Louisville, and North Canton Ex. one year unification.

Jan. 15. Filed. Canton S-18, Transcript proceedings and testimony p. 402-538.

February 25. 2367-S-18, Canton, Filed, agreed stipulations testimony taken in A. U. R. P. No. 124, Toll Service

License Contract between the Ohio Bell Telephone Company and the A. T. & T. Company shall be included and become part of record in these proceedings.

Apr. 8. Filed. Transcript proceedings and testimony A. U. R. P. No. 124, Long Distance Toll Rates in stipulated case S-18, Canton, 591 pages, being the evidence adduced at hearing February 24, 1924 to February 29, 1924 inclusive.

Apr. 16. Filed. Transcript proceedings and testimony A. U. R. P. No. 124, Long Distance Toll Rates in stipulated case S-18, Canton; 299 pages, being evidence adduced at hearing March 25 to 28, 1924, inclusive.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding No. 3307.

[fol. 959] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 2367. S-22

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Akron, Ohio

1922

Oct. 14. Filed, by the Ohio Bell Telephone Company Supplemental Petition in re Unified Service Rates in Akron and Cuyahoga Falls and Tallmadge, Ohio Exchange S-22, Assigned for hearing Akron S-22, Tuesday December 19, 1922 at ten o'clock a. m. C. S. T. Notice given to Mayors and City Solicitors in Areas named.

Dec. 11. Upon application Director of Law, Akron, Ohio, S-22 and good cause shown, assignment of hearing December 19, 1922 vacated and said hearing reassigned for hearing Wednesday, February 14, 1923 at ten o'clock a. m. C. S. T. Hearing Room. Notice given.

1923

Feb. 14. Resolution of Council of City of Akron in protest filed. Hearing held and motion City of Akron vs.

A. P. P. for Supplemental Order fixing rates for service. Exhibits filed: Williams, (Akron) 1, Appraisal; 2, Chart Time to Build Akron Exchange Service Area Plant; 3, Expenditures for Plant Construction; 4, Interests during construction; 5, Allowances made by different Commissions working Capital, % W. C. to Reproduction Cost New; 6, % Summary; 7, Estimated Reproduction Costs New; 8, Estimated Present Condition after unification of service; 9, Depreciation of Plant and Equipment, etc.; Land Exhibit—1, Report of Appraisal Committee for 76 S. High St.; Exchange dated November 27, 1922; 2, Ohio State Main Ex. Site; 3, Ohio State S. O. Sub. Exchange Site; 4, Same, West Ex. Site; Building Exhibit—1, Summary—Detailed Estimate; 2, Cost of Replacement Main Ex.; 3, Same, South Ex.; 4, Same, West; Cooper, 1, Estimated Cost in connection with Unification; 2, Statements 1, Operation Cost one year combined properties; 2, Income; 3, Operating Revenues; 4, Operating Expenses; 5, Subscribers Station Revenues; 3, Tariffs; 4, Comparison of Monthly Rates.

Feb. 14. Entry overruling motion City of Akron to dismiss Supplemental Application, Ohio Bell Telephone Company for order fixing rates for unified service, Akron, said City of Akron excepted, exceptions noted.

Feb. 27. Filed. Transcript Proceedings and Testimony Cuyahoga Falls S-22 (97 p.) taken February 14, 1923, Filed.

March 28. Hearing held Akron Exchange Area S-22. Exhibits filed, Schneider, 1, Cost of Establishing Business; Cooper 1, Estimated Cost Unification; 2-1, Statement of Operations; 2-2, Income Statement; 2-3, Operating Revenue 1 year; 2-4, Operating Expenses; 2-5, Exchange Service Revenue. Further hearing recessed to May 9, 1923 at ten o'clock a. m. Green 1, I. C. C. System of Accounts.

Apr. 6. Transcript of testimony and proceedings, S-22 (Akron, etc.) pages 98-155, filed.

May 9-10. Sessions of hearing on S-22 (Akron, etc.) and further hearing recessed to Monday, June 25, 1923 at 12:30 o'clock p. m. C. S. T. at hearing room.

May 23. Filed, Transcript of Proceedings and Testimony S-22 (Akron) p. 156-301.

June 25-26 & 27. Sessions of hearing on S-22 Akron rate. [fol. 960] July 6. Filed, Transcript proceedings and testimony on S-22, Akron exchange. Page 302-354.

1924

Jan. 7. Filed, Reports and Summary Sheets, Akron S-22 with Detailed Inventory.

Jan. 23. S-22, Akron, Entry certifying tentative valuation as of October 14, 1922, Copy served by registered mail upon company Mayors of Akron, Cuyahoga Falls and Tallmadge, Ohio—77449-50-51-52.

Jan. 30. 2367 S-22—Copy of entry certifying tentative valuation addressed to Mayor, Tallmadge, Ohio returned endorsed "No Mayor Here."

Feb. 21. S-22, Akron, filed, protests Commission's tentative valuation City of Akron and The Ohio Bell Telephone Company.

Feb. 23. S-22, Akron, protests vs. Commission's tentative valuation assigned for hearing Wednesday April 16, 1924 at ten o'clock a. m. C. S. T. Hearing Room. Notice given.

Feb. 25. 2367 S-22, Akron, filed agreed stipulations, testimony taken in A. U. R. P. No. 124, toll service license contract between The Ohio Bell Telephone Company and the American Telephone and Telegraph Company, shall be included and become part of record in these proceedings.

Mar. 27. S-22, Akron, Upon application Counsel, City of Akron, Ohio, and with consent Counsel City of Akron, Ohio, assignment of hearing, Protests Certified Tentative Valuation, April 16, 1924, vacated and hearing reassigned for Monday April 28, 1924, at 12:30 o'clock p. m. C. S. T. Hearing Room.

Apr. 8. Filed, transcript proceedings and testimony A. U. R. P. No. 124, Long Distance Toll Rates in stipulated rates S-22, Akron, 591 pages, being the evidence adduced at hearing February 24, 1924 to February 29, 1924, inclusive.

Apr. 16. Filed, transcript proceedings and testimony A. U. R. P. No. 124, Long Distance Toll Rates in stipulated rates S-22, Akron, 299 pages, being evidence adduced at hearing March 25, to 28, 1924, inclusive.

Apr. 28-29. S-22, Akron, Hearings in re protest vs. Commission's valuations, Exhibits filed, Akron. Williams, 10-16 inclusive.

June 30. S-22, Akron, 355-472 p., transcript proceedings and testimony.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding No. 3307.

[fol. 961] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 2367. S-23

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Barberton, Ohio

1922

Oct. 31. Filed by The Ohio Bell Telephone Company Supplemental Petition in re Unified Service Rates in its Barberton Exchange Area.

Oct. 31. Application Unified Service Rates, Barberton Exchange Area assigned for hearing Tuesday December 19, 1922 at ten o'clock a. m. C. S. T. Hearing Room. Notice given.

Dec. 15. Upon Commission's own motion, assignment of hearing, S-23, Barberton Exchange District, December 19, 1922 vacated; reassigned for Wednesday February 14, 1923, at ten o'clock a. m. C. S. T. Hearing room. Notice given.

1923

Feb. 14. Barberton, Report of Appraisal Committee, Land and Building; Hearing recessed to

Feb. 27. Filed, transcript proceedings and testimony, Barberton S-23, 19 p. taken February 14, 1923, filed.

Mar. 28. Barberton, further hearing. Exhibits filed, Cooper 1, Estimated Cost of Unification; 2, Statement 1—Operations, 2—Income; 3, Operating Revenues Combined Properties; 4, Operating Expenses; 5, Exchange Revenues; 3, Schedules Sheets 1, 2, 3, 4, 5, 6, 7, 8, 2 Maps; 4, Rate Comparison, Williams—Appraisal recessed to May 9, 1923 at ten o'clock a. m. Schneider, No. 1, Cost of Establishing Business.

Apr. 6. Transcript of testimony and proceedings, S-23, Barberton, pages 20-77, filed.

May 9-10. Sessions of hearing on S-23 (Barberton) and

further hearing recessed to Monday June 25, 1923 at 12:20 o'clock p. m. C. S. T. Hearing room.

May 23. Filed, transcript of proceedings and testimony S-23 (Barberton) pages 156-301.

June 25-26 & 27. Sessions of hearing on S-23, Barberton. Filed, motion of City of Barberton for order requiring immediate unification. Exhibits offered and introduced; Company's (S-23), Williams 1, Appraisal Barberton property; 2, Per Cent. Condition; 3, Reproduction Costs after unification; 4, Present value after unification; 5, Annual Charges for Depreciation.

Oct. 5. Transcript proceedings and testimony S-23 Barberton Exchange, heard June 25, 1923, filed, 89 pages.

1924

Jan. 23. S-23, Barberton, Entry certifying tentative valuation as of October 31, 1922, copy served by registered mail upon Company, Mayor of Barberton, Ohio, 77446-47-48.

Feb. 19. Filed S-23, Motion City of Barberton for an order fixing and determining rates to be charged for unified service, Barberton, Ohio Exchange Area.

Feb. 21. S-23, Barberton, Filed, Separate protests, City of Barberton and The Ohio Bell Telephone Company vs. tentative valuation Public Utilities of Ohio.

Feb. 23. S-23, Barberton, Protests vs. Commission's tentative valuation assigned for hearing Tuesday April 22, 1924 at ten o'clock a. m. C. S. T. Hearing room. Notice given.

[fol. 962] Feb. 25. 2367—S-23, Barberton, filed, separate stipulations agreeing testimony taken A. U. R. P. 124, involving rate and charges. The Ohio Bell Telephone Company toll service between points State of Ohio in re license contract between The Ohio Bell Telephone Company and the American Telephone & Telegraph Company shall be included and become part of record in proceedings 2367 S-23.

Apr. 8. Filed, transcript proceedings and testimony A. U. R. P. No. 124, Long Distance toll rates in stipulated case S-23, Barberton, 591 pages, being the evidence adduced at hearing February 24, 1924 to February 29, 1924 inclusive.

Apr. 16. Filed, transcript proceedings and testimony, A. U. R. P. No. 124, Long Distance toll rates in stipulated case S-23, Barberton, 299 pages, being evidence adduced at hearing March 25 to 28, 1924, inclusive.

Apr. 28-29. S-23, Barberton, Hearings in re protest vs. Commission's valuations. Exhibits filed, Barberton, Williams 6 to 8, inclusive, Greene No. 1, Uniform System of Accounts, Prescribed by I. C. C.

June 30. S-23, Barberton, 321-204 p. transcript proceedings and testimony.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding 3307.

[fol. 963] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 2367. S-26

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Canal Winchester, Ohio

1923

May 31. Filed, Supplemental Applications for fixing of Rates for unified service at Canal Winchester, S-26, Hearing assigned on S-26 for Wednesday September 19, 1923 at 9 o'clock a.m. C. S. T. Hearing Room, Columbus. Notice given.

Sept. 14. Filed by applicant Bell Telephone Company, application for postpon-ment of hearing in re S-26 Canal Winchester. Entry vacating assignments of September 18, & 19, 1923, and reassigning same for S-26 Canal Winchester for Thursday, November 15, 1923 at ten oclock a. m. C. S. T. Hearing room. Notice given.

Nov. 15. S-26, Canal Winchester, Hearing in re rates for unified service, Exhibits filed. Williams, 1, Appraisal; 2, Percentage Summary; 3, Estimated Reproduction Costs, New; 4, Estimated Present Conditions; 5, Plant Depreciation; Hanna 1, Unification Costs; 2-1, Operations Combined Properties, one year; 2-2, Income Statement; 2-3, Operating Revenues; 2-4, Operating Expenses; 2-5, Exchange Service

Revenues; 3, Schedules; 4, Nos. Rates Principal Classes of Service.

Nov. 28. S-26, Canal Winchester, filed exhibit requested at hearing, Statements, 1-Operations; 2, Income; 3, Operating Revenues; 4, Operating Expenses.

Dec. 1. Filed, transcript proceedings and testimony, filed. S-26, Canal Winchester.

Dec. 3. S-26, Upon application Village of Canal Winchester further hearing assigned for Wednesday, January 9, 1923 at ten o'clock a. m. C. S. T. Hearing room. Notice given.

1924

Jan. 9. Canal Winchester, S-26, Hearing completed.

Jan. 17. Filed, Canal Winchester, S-26, transcript proceedings and testimony, filed, 89 pages.

Jan. 16-17 & 18. Further sessions of hearing.

Jan. 29. Filed, S-26, Canal Winchester. Franklin Farmers Institute, Canal Winchester, January 10 & 11, 1924, Extract from resolution protesting increased rate.

Sept. 22. Canal Winchester S-26, Filed reports of telephone expert of investigation.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding 3307.

[fol. 964] Before Public Utilities Commission of Ohio

No. 2367. S-27

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Youngstown, Ohio

1923

June 28. Filed, Supplemental Application (designated S-27) for order fixing rate for unified service in Youngstown

service area. Hearing assigned for Thursday September 20, 1923 at 9 o'clock a. m. C. S. T. Hearing room, Columbus. Notice given.

Aug. 13. Filed. Protest vs. increased rates, Youngstown, S-27, R. A. McClain.

Sept. 20 & 21. Hearing in re Youngstown Area S-27, filed. Exhibits by Company—Statement Reproductive Value, page- 1 to 7 inclusive; Certificate of Appraisal, Real Estate; Schneider 1, Cost of Establishing Business; Cooper 1, Estimated Costs in connection with Unification; 2-1, Statement of Operations, Combined Properties; 2-2, Income; 2-3, Operating Revenues; 2-4, Operating Expenses; 2-5, Exchange Service Revenues; 3, Tariffs (10) and 3 maps; 4, Monthly Rate Principal Classes of Service; Williams 1, Appraisal; 2, Chart; 3, Expenditures Plant Construction; 4, Interest during Construction; 5, Percentage Summary; 6, Estimated Reproduction, New; 7, Estimated Present Condition; 8, Depreciation.

Oct. 16. Filed, transcript proceedings and testimony S-27, Youngstown, Ohio, filed. 214 pages.

1924

July 29. Filed Report and Tentative Valuation, S-27 Youngstown by telephone expert.

Aug. 6. S-27, Youngstown, Entry certifying tentative valuation.

Aug. 6. Entry certifying tentative valuation served by registered mail upon President, The Ohio Bell Telephone Company and Mayor of Youngstown.

Aug. 25. S-27, Youngstown, filed protest vs. Commission's tentative valuation; assigned for hearing on protests Wednesday October 8, 1924 at 9 o'clock a. m. C. S. T. Hearing room. Notice given.

Aug. 29. S-27, Youngstown, filed protest The Ohio Bell Telephone Company to Commission's tentative valuation.

Oct. 8. S-27, Youngstown, hearing on protests tentative valuation, testimony shows Exhibits filed, Williams 9, Comparison Commission's tentative and O. B. T. Company valuations; 10, Analysis of Differences, Reproduction, New; 11, Comparison, Net Additions; 12, Comparison Percentages Reproduction Costs, New; 13, Percentage Relations all other Costs to Material; 14, Comparison Percentage relations of all other Costs to Material Costs; 15, Comparison Actual

Labor Costs completed jobs, 1921-1922, and Green No. 1, I. C. C. Uniform System of Accounts; 2, Blue Print Map Telephone Properties Depreciation Sections.

Oct. 24. Transcript proceedings and testimony filed, 155 p.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding 3307, and assignment of hearing S-27 Youngstown, hereto assigned November 19, 1924 vacated and reassignment thereof deferred, pending order in consolidated proceeding No. 3307.

Dec. 6. Filed, transcript proceedings and testimony of certain inquiries answered by telephone expert after research, 2 p. 156-157 in S-27, 2367, Youngstown.

[fol. 965] Before Public Utilities Commission of Ohio

No. 2367. S-28

In the Matter of the Joint Petition of The Ohio Bell Telephone Company and The Ohio State Telephone Company for the Consent of The Public Utilities Commission of Ohio to and for Their Approval of the Consolidation of the Said Two Companies under the Name of The Ohio Bell Telephone Company

Supplemental Application for Rates for Unified Service at Toledo, Ohio

1923

July 2. Filed, Supplemental Application No. 28 for an order fixing rates for unified service in Toledo, Ohio Exchange Area. Hearing assigned for Monday October 1, 1923, at 12:30 o'clock p. m. C. S. T. Hearing Room, Columbus. Notice to parties given.

Oct. 1. S-28, Toledo Exchange Area, unified service rate hearing. Exhibits filed, The Ohio Bell Telephone Company, Williams 1, Reproduction Costs; 2, Present Condition; 3, Reproduction Costs, New; 4, Estimated Present Conditions; 5, Depreciation Plant and Equipment; Cooper, 1, Estimated Cost Unification; 2-1, Operations Combined Property, one year; 2-2, Income; 2-3, Operating Revenues; 2-4, Operating Expenses, one year, combined properties; 2-5, Exchange Service Revenue; 3, P. U. C. O. Sheets 1 to 10 inc; 4, Monthly Rates, Service Principle, Classes of. Reces- taken to Monday December 3, 1923 at 1:30 o'clock p. m. Hearing room.

Oct. 29. Filed, transcript proceedings and testimony, Toledo S-28, 59 p.

Nov. 27. Toledo S-28, Upon application City of Toledo and good cause shown hearing assignment December 3, 1923, vacated said hearing reassigned for Friday December 21, 1923 at ten o'clock a. m. C. S. T. Hearing room. Notice given.

Dec. 21. Further hearing in re Toledo S-28, Exhibits filed by Company A—Notice I. C. C. March 18, 1920 in re transportation act; B—Uniform System Accounts—I. C. C. Further hearing adjourned to Monday February 11, 1924 at 1:30 o'clock p. m. Hearing room, Columbus, Ohio.

1924

Jan. 5. Filed, S-28, Toledo, Testimony of December 21, 1923, 61-142 p.

Feb. 7. S-28, Toledo, filed. Protest City of Toledo vs. proposed rate schedule, set out in Exhibit heretofore filed.

Feb. 7. S-28, Toledo, By agreement of parties, hearing assignment February 11, 1924, vacated, reassigned for Wednesday February 13, 1924 at ten o'clock a. m. C. S. T. Hearing room. Notice given.

Feb. 13-14. S-28, Toledo, Session of Hearing filed. Exhibits City 1, Financial Report O. S. Telephone Company; 2, Same, Central Union Telephone Company; 3, Same, Ohio Bell Telephone Company.

Feb. 25. 2367—S-28, Toledo, Filed, agreed stipulations testimony taken A. U. R. P. No. 124, toll service license contract between The Ohio Bell Telephone Company and the A. T. & T. Company shall be included and become part of record in these proceedings.

Mar. 5. 2367—S-28, Toledo, Filed, Transcript proceedings and testimony 143-233 inclusive.

Mar. 13-14. S-28, Toledo. Sessions of hearing, Exhibits filed, Snook 1, P. B. X. 1, Statement, 2 sheets, 1 and 2 with Blue Print Supplements; further hearing recessed to Wednesday April 30, 1924.

Apr. 8. Filed, Transcript proceedings and testimony A. U. R. P. No. 124 Long Distance Toll Rates in stipulated case S-28, Toledo, 591 pages, being the evidence adduced at hearing February 24, 1924 to February 29, 1924, inclusive.

Apr. 7. S-28, Toledo, Ohio, Filed, transcript proceedings

and testimony, filed, of hearing March 13 and 14, 1924. 206 p.

Apr. 16. Filed, transcript proceedings and testimony, A. U. R. P. No. 124, Long Distance Toll Rates in stipulated case S-28, Toledo, 299 p. being evidence adduced at hearing March 25, to 28, 1924, inclusive.

Apr. 18. Upon application City of Toledo and good cause shown and consent thereto, of Counsel, Ohio Bell Telephone Company assignment S-28, Toledo, April 30, 1924, vacated [fol. 966] and hearing reassigned for Thursday May 15, 1924 at 9 o'clock a. m. C. S. T. Hearing room. Notice given.

May 15-16. S-28, Toledo, hearing held, Exhibits filed, City of Toledo, Snook, Revised Exhibit 1, Statement 1 and Statement 8 and Exhibit 2.

June 30. S-28, Toledo, 613431 p. Transcript proceedings and testimony filed.

Nov. 7. By order of Commission further proceedings herein consolidated in Proceeding No. 3307.

[fol. 967] Before Public Utilities Commission of Ohio

No. 3181

The Village of Hubbard, Complainant,

vs.

The Ohio Bell Telephone Company, Defendant

Filed June 20, 1924

Complaint Alleges Violation of Contract Existing Between the Complainant and Defendant's Predecessor The Ohio State Telephone Company by the Assessment of Toll Charges for Service Between the Village of Hubbard and City of Youngstown, Ohio, and Increased Rates for Local Exchange Service

1924

June 20. Copy of complaint served upon defendant; answer day July 8, 1924.

July 7. Filed. Motion of The Ohio Bell Telephone Company to strike certain allegations from complaint.

Aug. 20. Entry granting motion of The Ohio Bell Telephone Company to strike certain allegations from the complaint to which order, complainant, the Village of Hubbard excepts, exceptions noted, and requiring said defendant, to answer complaint on or before September 4, 1923.

Aug. 20. Answer of defendant filed, complaint assigned for hearing Tuesday, October 2, 1924 at nine o'clock a. m. C. S. T. Hearing room. Notice given.

Oct. 2. Complaint heard; Exhibits filed by defendant; Williams, No. 1, Hubbard Appraisal; 2, Percent. Appraisal; 3, Present Condition; 4, Depreciation; Hanna, 1, a, Operations; b, Income; c, Operating Revenues; d, Operating Expenses. Hearing adjourned to December 4, 1924.

Oct. 24. Filed, transcript proceedings and testimony, filed. 178 p.

Nov. 7. Further proceedings by order of Commission consolidated in Proceeding No. 3307, assignment of further proceeding December 4, 1924, vacated, reassignment deferred for proper order in Proceedings 3307.

[fol. 968] Before Public Utilities Commission of Ohio

No. 1368

In the Matter of the Schedules of the Central Union Telephone Company of Columbus, Ohio, Proposed to Become Effective From and After January 1, 1918

Filed December 31, 1917

Complaint and Protest of Increased Telephone Rates for Residential Telephone Service, City of Columbus, Ohio

1917

Dec. 31. Resolution City Counsel passed December 21, 1917, City of Columbus, filed as Exhibit.

Dec. 31. Copy of complaint served upon E. A. Reed, General Manager, Rec'rs, Central Union Telephone Company and notice date of hearing.

Dec. 31. Complaint and appeal assigned for hearing Thursday February 7, 1918, at ten o'clock a. m. Hearing room. Notice given.

1918

Feb. 7. Heard in part, recessed until Monday February 18, 1918 at one thirty o'clock p. m. Hearing room.

Feb. 13. Answer of Central Union Telephone Company filed.

Feb. 18. Further hearing of complaint and order directing receivers of Central Union Telephone Company to make inventory of property of said company, within exchange area of Columbus as of January 1, 1918, to be filed on or before May 20, 1918.

Feb. 19. Transcript proceedings and testimony taken February 18, 1918, filed.

May 16. Application for extension of time to file inventory, entry granting extension of time to July 20, 1918.

July 19. Entry granting entry of time to September 20, 1918 to file inventory.

Sept. 20. Detailed inventory filed by Central Union Telephone Company of Columbus, Ohio, property.

Nov. 23. Entry filing supplemental complaint, copy of supplemental complaint served upon Central Union Telephone Company; December 10, 1918 fixed as answer day.

Dec. 7. Answer of complaint and protest against rates to become effective from and after December 1, 1918.

1919

Feb. 14. Columbus Exchange Accounts 261, 264, 265 with explanatory statements filed by The Central Union Telephone Company.

Apr. 8. Detailed overhead values, detailed inventory and report of telephone expert on tentative valuation file.

Apr. 9. Entry fixing tentative valuation of Central Union Telephone Company in Exchange Area of Columbus, Ohio as of January 1, 1918.

Apr. 9. Copy of entry fixing tentative valuation served by registered mail upon E. A. Reed, General Manager, Rec'rs Central Union Company and Hon. Geo. Karb, Mayor of City of Columbus, R. R. No. 77086-7. R. R. R. filed.

May 7. Protest and Notice of Protest of Valuation filed by Central Union Telephone Company.

May 8. Protest by signers of complaint against increased business rates and protest by signers of complaint against increased residence rates against tentative valuation, filed.

June 24. Protest against tentative valuation of Central Union Telephone Company assigned for hearing Wednesday July 30, 1919 at 9 o'clock a. m. Hearing room. Notice given.

[fol. 969] July 14. Upon application of respondent and good cause shown, assignment of hearing of protests versus tentative valuation July 30, 1919, vacated and said hearing continued to Tuesday, September 23, 1919, at ten o'clock a. m. Hearing Room. Notice given.

Sept. 23. Hearing called, heard in part, recessed to Tuesday October 21, 1919, at ten o'clock a. m., hearing room. Exhibits filed; Reed 1 to 17, inc.; Kositzky, Exhibit No. 1; Schneider, Exhibit No. 1.

Sept. 29. Transcript proceedings and testimony filed.

Oct. 22-23. Further hearing held, recessed to a day to be fixed; Exhibits filed, Kositzky, 1, Photos of Columbus Exchange; 2-a and 2-b, Comparative Sheets; 3, Comparison, Sheets Distribution System; 4, Blue Print, Wage Scale; 5, Pamphlet, Uniform System of Accounts, 1st issue I. C. C.; 6, Unit Costs and Material Prices; 7, Certificate of Appraisal, Valuation Committee, Columbus Real Estate Board; 8, Cost of Building, recent construction; 9, W. S. Hays, Archt. Engr., letter in re value of several buildings owned and occupied by C. U. T. Company; 10, D. W. McGrath & Sons, letter in re costs of reproduction, several buildings C. U. T. Company; 11, Detail C. O. Costs; 12, Detailed Station Equipment Costs; 13, Appraisal; 14, Chart, Time required to build Columbus Plant; 15, Expenditures for Plant Construction period of 3 years; 16, Graphic Chart; 17, Interest during Construction; 18, Chart Costs of Establishing Business; 19, Chart C. of E. B. Accumulative Expenditures for Plant, etc.; 20, Chart 1, C of E. B. Expenses During Construction period; 21, Chart C. of E. B. —Exp. and Rev. during Development; 22, Chart—C. of E. B. Normal Operating Deficits 2 yr. Development period; 23, Cost of Establishing Business; 24, Present Condition of Physical Property; Sloan 1, Report Value of Property; Schneider No. 1, substituted for Schneider No. 1, filed September 23, 1919.

Oct. 31. Transcript proceedings and testimony filed.

1920

Feb. 18. Entry consolidating hearing in case 1900 with 1368; same heard in part; Exhibits filed Reed, 18, Proposed

Increase Revenue Accounts; 19, Average Monthly Salary per Employee; 20, Operating Force Losses, Traffic Department; 21, Traffic Department—Employment Conditions; 22, Labor turn-over, Plant Department; 23, Force turn-over; Crunden, A, Revenues and Expenses; B, Income Statement; C, Telephone Operating Revenue; D, Telephone Operating Revenues; E-1, Rate increases; E-2, Wage Increases; F, Gross Additions and Betterments; G, Revenues and Expenses, 1 year based on 5 months July to November, 1919, inclusive; H, Revenues and Expenses, Same; Kositzky, 25, Present Conditions; 26, Summary of Appraisal; 27, Annual Rate of Depreciation; 28, Depreciation Physical Property; 29, Present Condition, Columbus Exchange Commission Basis; 30, Comparison Company's Valuation with Commission Tentative Valuation; Alvord, No. 1, Description going value.

Feb. 25. Hearing completed. Crunden, Ex. 1, Analysis of Current Maintenance, Filed.

Mar. 8. Transcript proceedings and testimony, filed.

Mar. 31. Proceedings 1368, 1453 and 1600 heretofore consolidated with 1900, dismissed and pending completion of appraisal, Columbus Exchange property. Central Union Telephone Company, this proceeding continued on question of valuation.

Apr. 28. Entry of March 31, 1920 in case 1900, in so far as it dismisses proceeding in case No. 1368, hereby is vacated and case No. 1368 reinstated for further proceeding.

[fol. 970] Apr. 28-29. Hearing in re valuation, Exhibits filed. Alvord 1, Brief description of Going Value; City's Exhibit No. 2, Annual Rate of Depreciation for each Plant and Equipment; Kositzky No. 25, Presented but not admitted, hearing recessed to Monday, May 3, 1920, at 9:30 a. m. C: S. T. Hearing Room.

May 10. Transcript proceedings and testimony taken April 28 and 29, 1920, filed.

May 29. Application for modification and amendment of order as of March 31, 1920, assigned for hearing Thursday June 24, 1920 at 9 o'clock C. S. T. Hearing Room. Notice given.

June 24. Motion filed, by City of Columbus and Fred W. Postle and 131 other business subscribers and 325 resi-

dence subscribers to dismiss application for modification and amendment of order as of March 31, 1920.

June 24. Entry granting leave to strike application for modification and amendment of order as of March 31, 1920 from file and granting leave upon request of Central Union Telephone Company, to apply, by amended pleading for modification of order under Proceedings 1900, and further proceedings and hearing upon said application be had, and taken and recorded in Proceeding No. 1900.

[fols. 971-972] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 1900

In the Matter of the Investigation by the Commission, Upon Its Own Initiative, to Determine the Reasonableness and Justness of Certain Proposed Rates Published by The Central Union Telephone Company to Become Effective March 1, 1920, in the City of Columbus, Ohio.

Filed February 5, 1920

Investigation by the Commission of Rates for Service, Published by Central Union Telephone Company, to Become Effective March 1, 1920, in the City of Columbus, Ohio

1920

Feb. 5. Entry instituting investigation assigns hearing City of Columbus, Tuesday, February 17, 1920 at 10 o'clock a. m. Hearing room. Notice thereof served upon Company and Mayor and City Solicitor of said City.

Feb. 17-18. Hearing in re Columbus, in part; Entry consolidating hearing with Case 1368, for Exhibit list see 1368.

Feb. 25. Bloom Exhibits. 1, Revenues and Expenses and Net Earnings; 2, Annual Rates of Depreciation of Plant and Equipment; 3, Balance Sheet, Entire Company; 4, Agreement American Telephone and Telegraph Company and Central Union Telephone Company; 5, Letter February 24, 1919, Pres. C. U. T. Company to P. U. C. in re 4½% Contract, A. T. & T. Company; 6, Principal Stages, Development of Paper insulated cable used in Bell System; 7, Photograph Poles and Crossarms Construction.

March 17. Reports of telephone expert of investigation for Columbus City.

March 31. Finding of the Commission filed.

March 31. Order of the Commission finding rates, charges, rentals and tolls for furnishing local exchange service in the City of Columbus set forth in schedules listed therein are not unjust and unreasonable except in so far as they exceed rates listed in order. Commission being engaged in appraisal of Columbus Exchange property for purpose of fixing schedule of reasonable rates, finds rates, charges, rentals and tolls set out in schedule for said City are not unjust and unreasonable except in so far as they exceed rates listed in order and continues proceeding for purpose of completing appraisal. Proceedings Nos. 1368, 1453 and 1600, heretofore consolidated with this Proceeding are hereby dismissed. Copy served upon Mayor or City Solicitor of Municipalities interested.

March 31. Application for rehearing filed by Central Union Telephone Company.

Apr. 1. Entry denying application for rehearing; Central Union Telephone Company excepts, exceptions noted.

Apr. 19. Upon application Central Union Telephone Company, further hearing in re City of Columbus assigned for further hearing Wednesday April 28, 1920 at 9 o'clock a. m. C. S. T. Hearing Room. Notice given.

Apr. 28. Entry vacating order of March 31, 1920, in so far as same dismisses Proceeding 1368, and reinstating Proceeding 1368 according to law.

June 24. Filed, application amended as per order of June 24, 1920, in cause No. 1368 for an amendment of order heretofore made herein, fixing and prescribing rates and charges for local exchange service in the City of Columbus, Ohio.

June 24-25. Sessions of hearing heretofore fixed under Proceeding 1368, Exhibits filed. Kositzky 100, List of Engineering Circulars; 101, Photographs Types of Construction; 102, Letters in re specific services rendered, The C. U. T. Company, by A. T. & T. Company; 103, Special Work by A. T. & T. Company, Estimate of Saving, A. T. & T. Company; * Crunden, Exhibits A, B, C, D, and E (one cover) Rhoads, Exhibits No. 1, Tabular View of License Contract Service; 2, Department Development and Research; 3, De-

* No. 104, Pamphlet containing methods of Pole Reservation; 105, Map Affecting Transmission.

partment Operation and Engineering; 4, Titles Circular Letters and Specifications; 5, Bulletin on Transmission Equivalent 6, Photograph Rubber Cable; Rhoads, No. 7, Photo. Stages of Development Paper—Insulated Cable; 8, 1200 Pr. Cable Fanned Out; 9, 1200 Pr. Cable Section; 10, General Cable Splicing; 11, Underground splicing; 12, Aerial Cable Splicing; 13, House Cable Splicing; 14, Block Cable Splicing, Photographs; 15, Boston, Washington Type [fol. 973] Duplex Cable; 16, Cable Loading Coil and Section; 17, Wire Core Loading Cable; 18, Iron—Dust for Cable Loading Coil; 19, Repeater Blub and Socket; 20, Substation apparatus; 21, Underground Conduit construction; 22, Underground Cable Splicing; 23, Aerial Cable Construction; 24, Lock Cable Construction; 25, House Cable, Placing; 26, Drop Wiring; 27, General Specification Construction Wood Pole Lines; 28, Sub-station protecting installation; 29, First Aid; 30, Cases of Work on Hand; 31, Cases Work Completed; 32, Unexpired patent owned on controlled A. T. & T. Company; 33, Photographs, Blake Transmitter; 34, Transmitter No. 239; 35, Common Battery Bracket Transmitter No. 242; 36, Dittoe No. 250; 37, Transmitter No. 229; 38, Cross Section No. 229 Transmitter; 39, Transmitter No. 329; 40, Induction Coil No. 20; 41, Transmitters Western Electric Company; 42, Types of Transmitters now obsolete; 43, Receiver No. 101; 44, Receivers No. 122; 45, Cross Section No. 122, Receiver; 46, Receiver No. 144; 47, Types of Receivers now obsolete;

June 25. Further hearing recessed to Thursday July 8, 1920, 9:30 a. m. hearing room. (Columbus rates).

July 7. Transcript proceedings and testimony in re Columbus taken June 24, 1920, filed, 154 p.

July 8-9. Sessions of hearing in re Columbus rates. Exhibits filed, Reed, 24, Increased revenue due to increased rates April 1, 1920; 25, Estimate Increased Expenses due to Wage Increase; 26, Proposed Increase in Exchange Rates; 27, Payments A. T. & T. Company, Columbus Circuits; 28, Depreciation, Plant and Equipment; 29, Sets of Instruments Received, etc. 1913-1919, inclusive; City Exhibits, #10, Telephone Operating Income, Columbus, January 1, to June 30, 1917, Sheets 1, 2, & 3. Further hearing recessed to Wednesday July 21, 1920 at 9:30 o'clock a. m., hearing room.

July 21. Transcript proceedings and testimony in re Columbus hearing July 8 and 9, 108 pages, filed. Hearing resumed.

July 23. Transcript proceedings and testimony of July 21, City of Columbus, hearing filed, 35 pages.

July 30. Further hearing in re City of Columbus, Exhibits filed by City; Thomas No. 1, Subscribers Station Revenue Rebutting P. U. C. O. No. 1; 2, Operating Expenses rebutting P. U. C. O. No. 2; 3, Operating Revenues rebutting P. U. C. O. No. 3; 4, Income Statement rebutting P. U. C. O. No. 4; 5, Rebutting P. U. C. O. No. 5; 6, License Revenue rebutting P. U. C. O. No. —; 7, Rebutting Reed's revised Schedule No. 7. Further hearing recessed to Thursday, August 12, 1920, at 9:30 a. m. C. S. T.

Aug. 4. Transcript proceedings and testimony of hearing in re City of Columbus, July 30, 1920, filed. 41 pages.

Aug. 12. Further hearing in re City of Columbus.

Aug. 20. Transcript of hearing of August 12, 1920, filed. 92 pages.

Sept. 24. Memorandum brief in support of application for modification of order affecting Columbus rates, filed.

1921

Jan. 5. Brief, City of Columbus, filed.

Jan. 31. Reply brief, Central Union Telephone Company, filed.

Jan. 31. Report of telephone expert filed.

[fol. 974] Feb. 4. Finding and order of the Commission modifying and amending order issued herein March 31, 1920, to permit The Ohio Bell Telephone Company formerly the (Central Union Telephone Company) to establish certain rates set out therein City of Columbus, Ohio. pending final order of the Commission in proceeding 1368, wherein a schedule of reasonable and just rates, rentals and charges will be fixed. Schedules to be filed accordingly.

Feb. 24. Memorandum, brief and petition for rehearing City of Columbus, filed.

Feb. 28. Application for rehearing and vacation of temporary order in re City of Columbus, made herein February 4, 1921, denied, to which order applicants except. Exceptions noted.

Sept. 7. Report telephone expert filed.

[fol. 975] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

No. 1728

In the Matter of the Investigation by the Commission, Upon Its Own Initiative in re Service Connection Charges and Charges for Moves and Changes of Telephone Companies.

Filed August 1, 1919

Investigation to Determine What Charges, if Any, are Just and Reasonable to be Made by Telephone Companies Doing Intra-State Business in Ohio, for Installation, for Moving and for Connection

1919

Aug. 1. Assigned for hearing Tuesday, August 12, 1919 at ten o'clock a. m. Hearing Room. Notice given August 12, 1919. Heard in part, further hearing recessed to Wednesday, August 20, 1919 at ten o'clock a. m. Hearing Room. Exhibits Carey A, and Green 1 and 2 filed.

Aug. 15. Upon oral application Central Union Telephone Company et al, adjourned, hearing continued to Wednesday August 27, 1919 at ten o'clock a. m. Hearing Room.

Aug. 27. Transcript Proceedings and Testimony taken August 12, 1919, filed.

Aug. 27. Hearing completed—Exhibits filed—Symes No. 1, Cleveland Telephone Company; McBurney No. 1, Cincinnati and Suburban Bell Telephone Company; Reed 1 and 2, Central Union Telephone Company, Columbus; Barnard 1, Blue Print; 2 Table of Expenses.

Sept. 2. Transcript Proceedings and Testimony taken August 27, 1919, filed.

Sept. 13. Finding and Order of the Commission directing from and after October 1, 1919, telephone companies to cease and desist from maintaining, charging or collecting rates in excess of $1.00 transfer charge; $1.50 moving instrument from one location to another on same floor, $2.00 moving instrument from one floor of building to another. For other changes, made upon request of subscriber, actual cost of labor and material; establish a regulation requiring three months' rental in advance, not subject to discount in event of discontinuance; establish special rates for short-time service; charge for installation of telephone prohibited; schedules to be filed in conformity thereto. When such

charges, or any of them are maintained, special accounts to be opened by telephone companies subject to Commission's jurisdiction.

Sept. 15. Petition for rehearing filed by the Cincinnati and Suburban Bell Telephone Company; assigned for hearing Friday, September 26, 1919, at two o'clock p. m., Hearing Room. Notice given.

Sept. 20. Separate applications of Central Union Telephone Company and The Cleveland Telephone Company for rehearing, filed; reassigned for hearing Friday, September 26, 1919, at two o'clock p. m. Hearing Room. Notice given.

Sept 26. Applications for rehearing heard; Exhibits filed Cincinnati and Suburban Bell Telephone Company, A—Stations Connected; B—Operating Expense of Connecting Subscribers; C-1, Effect upon revenues if order had been effective throughout year 1919; C-2, Forecast of Earnings and Expenses year 1919; D—Proposed Schedule Service Connection Charges.

Sept. 29. Entry denying applications of Central Union Telephone Company. The Cincinnati and Suburban Bell Telephone Company and The Cleveland Telephone Company for Modification of Order to which ruling said companies each except; exceptions noted.

Sept. 29. Transcript proceedings and testimony taken. Hearing on Applications for Rehearing, filed.

Sept. 30. Entry denying Applications for Rehearing filed by Central Union Telephone Company, Cincinnati and Suburban Bell Telephone Company and The Cleveland Telephone Company, to which ruling said companies each except; exceptions noted.

[fol. 976] 1921

Dec. 31. Application of The Ohio Bell Telephone Company assigned for hearing Thursday, *Thursday* February 2, 1922, at ten o'clock a. m. C. S. T., at hearing room in State Office Building, Columbus, Ohio. Notice given to the Mayor and Solicitor and Prosecuting Attorney of each municipality and county in which telephone service is rendered.

1922

Jan. 18. Protest of the City of East Palestine, Ohio, filed.

Jan. 30. Proof of publication of notices for three consecu-

tive weeks in the following newspapers, filed by The Ohio Bell Telephone Company; Columbus Citizen; Lancaster Daily Gazette; Xenia Evening News; Marietta Register Leader; Canal Winchester Times; Dayton Journal; Xenia Evening Gazette; Ohio State Journal; Dayton News; Dresden Transcript; Columbus Citizen; Springfield Daily Sun; Miami Union; Franklin Chronicle; Columbus Citizen (for Gahanna, Galloway, Grove City, Groveport, Harrisburg and Hilliards); Logan Republican; Madison Press; London Enterprise; Thornville News; Jeffersonville Citizen; Lancaster Daily Eagle; Miamisburg News; Middletown News-Signal; Middletown Journal; Washington Court House Record Republican; New Carlisle Sun; Coshocton Tribune; New Metamora Enterprise; Marietta Daily Times; Piqua Daily Call; Portsmouth Daily Times; Ripley Bee; Zanesville Times Recorder; Madison Co. Democrat; South Charleston Sentinel; Springfield News; Athens Messenger; Dayton Journal; Ohio State Register; Westerville Public Opinion; Peoples Defender; Yellow Springs News; The Signal; The Dispatch; Akron Beacon Journal; Alliance Review; Akron Evening Times; Canton Repository; Mahoning Dispatch; Wooster Daily Record; Door Daily Recorder; Niles Daily News; Canton News; Youngstown Telegram; Akron Press; Massillon Independent; Warren Chronicle; Steubenville Star; Toronto Tribune; Uhrichsville Evening Chronicle; Wellsville Union; Youngstown Vindicator; Cleveland News; Cleveland Plain Dealer; Elyria Chronicle Telegram; Painesville Telegraph; Willoughby Republican; Findlay Republican; Fostoria Daily Times; Toledo News-Bee; Toledo Blade; Maumee Advance-Era; Perrysburg Journal; Ottawa Co. Republican; Sandusky Star Journal; Toledo Times; Upper Sandusky Daily Chief.

Jan. 31. Communication of Mayor of East Palestine, withdrawing protest, filed. Proof of publication of notices in the following papers filed by The Ohio Bell Telephone Company; Thornville News; Nelsonville News; New Holland Leader; Massillon Independent; Hubbard Enterprise; Martins Ferry Times; Mingo Junction News; New Philadelphia Times; Ravenna Republican; Berea Enterprise.

Feb. 1. Proof of publication of notices by The Ohio Bell Telephone Company in the following newspapers filed: Newcomerstown News; Salem News; The Kent Courier;

Columbiana Daily Leader; Portsmouth Democrat; Sebring Times and Athens Messenger. Protests of City of Ironton, City of Zanesville, City of Cleveland and Village of Thornville filed.

Feb. 2. Proof of publication of notices in the following newspapers filed by The Ohio Bell Telephone Company: Columbiana Ledger; Barnesville Enterprise; Wheeling News; The Jeffersonian; Woodsfield Republican; Belmont Chronicle; The Buckeye State; Evening Review; Leetonia Weekly Magnet; Protests filed. Cities of Toledo, Jackson, and Barberton; The villages of New Carlisle, Trimble; Cities of Elyria and Painesville.

[fol. 977] Feb. 2. Application for Modification of Order of September 13, 1919, heard in part; further hearing recessed to March 16, 1922 at ten o'clock a. m. Exhibits filed at hearing. Reed 1, 2, 3 and 4; Cooper 1-16 inc.

Feb. 3. Proof of Publication, Bellaire Daily Leader filed by The Ohio Bell Telephone Company.

Feb. 16. Transcript Proceedings and testimony filed of hearing February 22, 1922, (87 p.).

March 16. Further hearing in re Application for Modification of Order; filed Protest City of Columbus; Exhibits Shyrock No. 1—Opinion Judge William E. Dever, Superior Court, Cook County; No. 2—Annual Report Directors to Stockholders American Telephone and Telegraph Company Year 1920.

March 24. Protest City of Toledo by Director of Law vs. proposed charges, filed.

March 24. Transcript Proceedings and testimony of hearing March 16, 1922, filed.

May 11. Memorandum on behalf of The Ohio Bell Telephone Company in support of application for modification of order dated September 13, 1919, filed.

May 23. Memorandum on behalf of Protestant, the City of Columbus, against application, filed.

June 3. Reply memorandum of The Ohio Bell Telephone Company to memorandum City of Columbus, Ohio, filed.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this twenty-third day of January, 1935.

(A true copy.) C. H. Knisley, Secretary.

[fol. 978] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 42

In re The Proposed Increased Rates of the Central Union Telephone Company for Local Exchange Service, Ripley, Ohio

1920

Nov. 13. Schedule designated P. U. C. O. No. 8, providing certain increased rates for service at Ripley exchange, pro-ferred for filing to become effective December 16, 1920.

Dec. 15. Complaint and protest against said schedule filed by Attorney, E. R. Young, on behalf of the Village of Ripley, Ohio.

Dec. 15. Order issued by Commission suspending said schedule for a period of thirty days from December 16, 1920. Hearing assigned for ten o'clock, A. M., Friday, January 7, 1921. Parties interested served with copies of said order.

Dec. 16. Application made by respondent asking Commission to determine amount of bond or undertaking to be filed.

Dec. 16. Entry made by Commission fixing amount of undertaking in the sum of Eleven Hundred Dollars.

Dec. 16. Undertaking in the sum of Eleven Hundred Dollars filed by respondent.

Dec. 16. Entry made by Commission approving said undertaking. Parties interested served with copies of said entries.

Dec. 16. Supplement No. 1 to said schedule P. U. C. O. No. 8, filed by respondent, postponing effective date of said schedule to January 1, 1921.

Dec. 28. Entry made by Commission reassigning hearing to Wednesday, February 16, 1921, at ten o'clock, A. M. Parties interested served with copies of such entry.

1921

Feb. 2. Entry made by Commission further postponing hearing to Tuesday, March 15, 1921, at ten o'clock, A. M. Parties interested served with copies of such entry.

Mar. 12. Entry made by Commission further postponing hearing to Friday, April 29, 1921, at nine o'clock, A. M., Central Standard Time. Parties interested served with copies of such entry.

Apr. 29. Hearing Held. (No appearances on behalf of protestants.) Exhibits filed by respondent: Williams Ex. 1; Williams Ex. 2; Williams Ex. 3; Williams Ex. 4; Williams Ex. 5; Williams Ex. 6; Williams Ex. 7; Williams Ex. 8; Williams Ex. 9; Williams Ex. No. 10; Williams Ex. No. 11; and Richardson Ex. 1.

May 5. Referred to Telephone Expert for recommendation.

Sept. 20. Entry made by Commission fixing tentative valuation of respondent's property in its Ripley exchange area. Copies of such entry served on parties in interest.

Oct. 19. Protest and notice of protest of valuation, filed by respondent.

[fol. 979] Nov. 23. Entry made by Commission assigning hearing on respondent's protest against tentative valuation for ten o'clock, A. M., Central Standard Time, January 10, 1922. Parties interested served with copies of such entry.

1922

Jan. 7. Entry made by Commission reassigning said hearing for ten o'clock A. M., Central Standard Time, Tuesday, April 11, 1922. Parties interested served with copies of such entry.

April 11. Hearing held on respondent's protest against tentative valuation. Exhibits filed by respondent: Williams Ex. 12 and Williams Ex. 13.

April 19. Transcript of proceedings and testimony received from stenographers.

April 26. Paper filed by respondent containing certain information agreed to be furnished as part of record.

August 18. Order made by Commission fixing final valuation. Copies of such order served on parties in interest.

1924

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see Docket in Formal Case 3307.)

[fol. 980] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 40

In re The Central Union Telephone Company's Proposed New Schedule Designated P. U. C. O. No. 5, Applying to Lancaster Exchange, Filed to Become Effective December 1, 1920

1920

Oct. 28. Schedule designated P. U. C. O. No. 5 proffered for filing to become effective December 1, 1920.

Nov. 29. Complaint against said proposed schedule filed by Geo. W. Vorys, Solicitor, on behalf of the City of Lancaster, Ohio. Motion filed by protestant asking Commission to compel said company to reappraise all its property in the City of Lancaster. Motion filed asking Commission to suspend said proposed new schedule.

Nov. 29. Order issued by Commission suspending schedule for a period of thirty days from December 1, 1920. Hearing assigned for ten o'clock a. m., C. S. T., Thursday, February 10, 1921. Parties interested served with copy of such order.

Nov. 29. Application made by respondent asking Commission to determine amount of bond or undertaking to be filed.

Nov. 29. Entry made by Commission fixing amount of undertaking at $12,000.00. Copies of such entry served upon parties in interest.

Nov. 29. Undertaking in the sum of $12,000.00 filed by respondent. Entry made by Commission approving said undertaking. Copies of such entry served upon parties in interest.

Nov. 30. Publisher's certificate of publication of the proposed increased rates filed by respondent.

1921

Jan. 17. Motion filed by protestant asking Commission to require respondent company to file a schedule of additions to and withdrawals from the plant of said company at Lancaster, Ohio, since January 15, 1914.

Jan. 17. Motion filed by protestant asking Commission to make final and absolute the tentative value fixed by the Commission as the valuation of the Central Union Telephone Company at Lancaster, Ohio, on January 15, 1914.

Feb. 4. Motion filed by protestant asking that hearing be postponed to April 15, 1921. Entry made by Commission reassigning hearing for Friday, April 15, 1921, at ten o'clock, a. m., C. S. T. Copies of such entry served upon parties in interest.

Apr. 13. Entry made by Commission further postponing hearing to nine o'clock, a. m., C. S. T., Friday, May 20, 1921. Copies of such entry served upon parties in interest.

May 20. Entry made by Commission further postponing hearing to nine o'clock, a. m., C. S. T., Friday, June 17, 1921. Parties interested served with copies of such entry.

June 14. Entry made by Commission further postponing hearing to nine o'clock, a. m., C. S. T., Wednesday, September 7, 1921. Parties interested served with copy of such entry.

Sept. 7. Entry made by Commission further postponing hearing to Wednesday, October 19, 1921, at ten o'clock, A. M., C. S. T. Parties interested served with copies of such entry.

[fol. 981] Oct. 18. Entry made by Commission further postponing hearing to Tuesday, November 29, 1921, at ten o'clock A. M., C. S. T. Parties interested served with copies of such entry.

Nov. 29. Entry made by Commission reassigning hearing for ten o'clock A. M., Central Standard Time, Tuesday, January 24, 1922. Parties interested served with copies of such entry.

1922

Jan. 24. Hearing Held. Exhibits offered and admitted in evidence on behalf of The Ohio Bell Telephone Company: Williams Ex. 1; Williams Ex. 2; Williams Ex. 3; Williams Ex. 4; Williams Ex. 5; Williams Ex. 6; Williams Ex. 7; Williams Ex. 8; Williams Ex. 9; Williams Ex. 10; Williams Ex. 11; Howell Ex. 1; and Schneider Ex. 1.

Jan. 31. Transcript of proceedings and testimony received from stenographers.

Feb. 3. Referred to Telephone Expert for investigation and report.

1924

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see Docket in Formal Case 3307.)

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this twenty-third day of January, 1935.

(A true copy.) —— ——, Secretary.

[fol. 982] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 124

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Toll Service Between Points in the State of Ohio, Filed to Become Effective January 21, 1924

1923

Dec. 21. Schedule identified as P. U. C. O. Toll No. 4, providing certain increased rates and charges for telephone toll service, filed by The Ohio Bell Telephone Company to become effective January 21, 1924.

1924

Jan. 18. Filed herein the protest vs. increased toll rates heretofore filed: Charles U. Shyrock, Zanesville; The Chillicothe Chamber of Commerce; Licking County Pomona Grange No. 60; Niles Chamber of Commerce; City Solicitor, Bridgeport; Resolution Morrow County Pomona Grange No. 12; Cleveland Wholesale Coal Distributors Association.

Jan. 18. Entry instituting Advanced Utility Rate Proceeding No. 124 and assigning hearing thereon Thursday, February 7th, 1924, at ten o'clock A. M., at the hearing room of the Commission. Notice given to municipalities.

Jan. 21. Filed, Protests City of Toledo by its Director of Law; the South Side Civic Association, Columbus, Ohio; Chillicothe Grange No. 2075.

Jan. 21. Filed, under signature of heads of Civic Organization, Ravenna, Ohio. Approval of Increased Rates should investigation disclose present rates do not provide sufficient revenue to meet operating charges, adequate wage scale and fair return on investment.

Jan. 23. Filed by Directors Steubenville Chamber of Commerce, protest vs. increased toll rates.

Jan. 23. Filed Chamber of Commerce, Ravenna, Ohio, President and Secretary, approval of increased rates, should investigation disclose present rates not sufficient to provide sufficient revenue to meet operating charges, adequate wage scale and fair return on investment.

Feb. 4. Protest Community Club, St. Clairsville, Ohio, vs. Increased Toll Rates.

Feb. 6. Filed, Protest Increased Toll Rates, Bridgeport by its City Solicitor.

Feb. 7 and 8. Sessions of hearing; Exhibits filed: Company's: Williams 1 and 2; Cooper 1, Statements A to D inclusive, 2—Charts, 1 to 4 inclusive.

Feb. 8. Filed, Protest City of Akron by its Mayor.

Feb. 9. Filed by Protestant Shyrock, Zanesville, data from report of A. T. & T. 1920 or 1921, as offered in Zanesville Rate Hearing.

Feb. 11. Session of hearing. Exhibits filed: Company, Schneider 1-5 inclusive. Adjournment taken to February 25, 1924.

Feb. 19. Filed, Protest City of Barberton by its Mayor. [fol. 983] Feb. 24. Filed, transcript Proceedings and Testimony taken February 7th, 8th and 11th, 1924, Pages 1-192.

Feb. 25. Filed by The State Citizens Association, Inc., by its Attorney, J. M. Lewis, nine signed petitions protesting increased rates for telephone service.

Feb. 26, 27, 28, 29. Sessions of hearing. Exhibits filed: Company: Rhodes 1-88, inclusive; Allen 1-11 inclusive; Crunden 1-25, inclusive; Eaton (Company's Exhibits 1 and 2 supplementing Eaton testimony). Adjournment taken to March 24, 1924, at one-thirty o'clock P. M., Hearing Room.

Mar. 7. Filed, Resolution No. 160-1924, Council City of Akron, requesting State Wide Investigation increased telephone rates.

Mar. 24. Filed transcript Proceeding and Testimony taken at hearing February 26-29, inclusive. Pages 192-782, inclusive.

Mar. 24-27. Sessions of hearing: Exhibits filed: Company: Sloan 1 and 1A; Hanna 1; Schneider 1-7, inclusive; Anthony 1 and 2; McBurney 1; Kositzky 1-33. Further hearing adjourned to Monday April 21st, 1924, at one-thirty o'clock P. M., Hearing Room.

Mar. 24. Filed by the State Citizens Association, Inc., by its Attorney, J. M. Lewis, four signed petitions Columbus Citizens protesting increased rates; one each, Dayton, Canton, Akron and jointly Canal Winchester, Urbana and Cardington.

Apr. 15. Application of The Ohio Bell Telephone Company for the determination of Amount of Bond filed.

Apr. 15. Filed, Bond of The Ohio Bell Telephone Company in the sum of $215,000.00, American Surety Company, surety thereon. Entry of The Public Utilities Commission of Ohio, approving same.

Apr. 21. Filed, transcript Proceeding and Testimony of the hearing March 24-27, 1924. Pages 783-1207.

Apr. 21-25. Sessions of hearing—Cross examination of Company's witnesses, Rhodes, Kositzky, Cru-den and Allen. Further hearing recessed to Monday, May 12, 1924, at one-thirty o'clock P. M., Hearing Room.

Apr. 24. Filed, Motions by Frank A. Gentsch: 1—To make the American Telephone and Telegraph Company a party — this action; 2—To require The American Telephone and Telegraph Company to submit cost of Apparatus to The Ohio Bell Telephone Company for the year 1923.

May 12. Filed transcript proceedings and testimony taken at the hearings April 21-25, 1924. Pages 1208-1714.

May 12. Filed by the State Citizens Association, Inc., Protests citizens of Zanesville and Ashland vs. increased rates.

May 12-13. Sessions of hearing. Exhibits filed: Allen 12-16 inclusive, Further hearing recessed to Monday, May 19th, 1924, at one-thirty o'clock, P. M., CST. Hearing Room.

[fol. 984] May 19-20. Sessions of hearing. Exhibits filed, Company, Cox 1-17, inclusive. Further hearing recessed to Monday May 26th, 1924, at one-thirty o'clock P. M., Hearing Room.

May 26-28. Sessions of hearing. Adjourned subject to call of Commission.

May 28. Filed: 1—Brief of Cities on Motion to Compel

Ohio Bell Telephone Company or American Company to show costs of services rendered under license contract; 2—Motion of the Cities of Cleveland, Toledo, Columbus, Akron, Dayton, Canton and Barberton, directing The Ohio Bell Telephone Company and The American Telephone and Telegraph Company to furnish certain information and data: (a) Total Receipts of The A. T. & T. Company under its Sub-Licensee Contract; (b) Total Expenditures made by General Staff of The A. T. & T. Company, both for the years 1919-1923, inclusive and (c) Detailed Statement of Expenditures by General Staff of The A. T. & T. Company in calendar year 1923 under license contract.

June 10. Filed transcript Proceedings and Testimony of Hearings commencing May 12, 19th and 26th, 1924. Pages 1715-2248.

June 25. Filed, Answer of The Ohio Bell Telephone Company.

July 11. Memorandum on behalf of The Ohio Bell Telephone Company against The Cities to compel The Ohio Bell Telephone Company or The American Telephone and Telegraph Company to show Cost of Services rendered under License Contract.

Oct. 14. This proceeding consolidated with Formal Case No. 3307, the so-called State Wide Case. For future entries, see Formal Docket No. 3307.

[fol. 985] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 132

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in its Massillon, Ohio, Exchange Area, Filed to Become Effective May 2nd, 1924

1924

Apr. 1. Schedule designated P. U. C. O. No. 9, applying to Massillon Exchange Area filed to become effective May 2nd, 1924.

Apr. 5. Protest against said proposed schedule filed by the City of Massillon, Ohio.

Apr. 9. Order issued by Commission suspending said

schedule for a period of 120 days from April 1st, 1924. Hearing assigned for nine o'clock A. M., Wednesday, May 14th, 1924. Parties in interest served with copies of such order.

May 5. Publisher's certificate of publication of the notice of the filing of said schedule filed by respondent.

May 14. Hearing Held. Exhibits and transcript of proceedings and testimony filed in Formal Case No. 2367-S-12. Hearing adjourned to May 23rd, 1924.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $17,000.00. Surety bond in the sum of $17,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

May 23. Hearing Held. Transcript of proceedings and testimony filed in Case No. 2367-S-12.

June 25. Answer filed by respondent company.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see Docket in Formal Case 3307.)

[fol. 986] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 135

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Its Youngstown, Ohio, Exchange Area, Filed to Become Effective May 2nd, 1924

1924

Apr. 1. Schedule designated P. U. C. O. No. 11, applying to Youngstown Exchange Area filed to become effective May 2nd, 1924.

Apr. 17. Protest against said schedule filed by the city of Youngstown, Ohio.

Apr. 21. Order issued by Commission suspending said schedule for a period of 30 days from May 2nd, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of said order served on parties in interest.

Apr. 28. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $65,000.00. Surety bond in the sum of $65,000.00 filed by respondent. Entry made by Commission approving said bond. Parties in interest served with copies of such entry.

May 1. Protest against said schedule filed by Xury Wilkins, City Solicitor on behalf of the city of East Youngstown, Ohio.

May 5. Publishers' certificates of publication of the notice of the filing of said schedule filed by respondent company.

June 25. Answer of respondent company filed.

Aug. 1. Joint protest filed by village of Poland and Poland Community Club.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307.)

[fol. 987] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 136

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service in Its Marietta, Ohio, Exchange Area, Filed on March 31st, 1924, to Become Effective May 1st, 1924

1924

Mar. 31. Schedule designated P. U. C. O. No. 1, applying to Marietta Exchange Area filed to become effective May 1st, 1924.

Apr. 21. Complaints against said proposed schedule filed by the city of Marietta, the Marietta Chamber of Commerce, and the County Commissioners of Washington County.

Apr. 23. Order issued by Commission suspending said schedule for a period of 120 days from March 31st, 1924. Assignment of hearing deferred pending further order of the Commission. Parties interested served with copies of such order.

May 5. Publishers' certificates of publication of the notice of the filing of said schedule filed by respondent.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed.

Bond fixed in the sum of Ten Thousand ($10,000.00) Dollars. Surety bond in the sum of $10,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

June 25. Answer filed by respondent company.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307).

[fol. 988] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 137

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service in Its Middletown, Ohio, Exchange Area, Filed on March 31st, 1924, to Become Effective May 1st, 1924

1924

May 31. Schedule designated P. U. C. O. No. 3, applying to Middletown Exchange Area, filed to become effective May 1st, 1924.

Apr. 21. Complaint against the proposed schedule filed by the city of Middletown, Ohio.

Apr. 23. Order issued by Commission suspending said schedule for a period of 120 days from March 31st, 1924. Assignment of hearing deferred pending further order of the Commission. Parties in interest served with copies of such order.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of Twenty Thousand ($20,000.00) Dollars. Surety bond in the sum of Twenty Thousand ($20,000.00) Dollars filed by respondent. Entry made by Commission approving said bond. Copies of such entries served on parties in interest.

June 25. Answer filed by respondent company.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307).

[fol. 989] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 138

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Akron, Barberton, Cuyahoga Falls and Tallmadge Exchange Areas, Filed to Become Effective May 2nd, 1924

1924

Apr. 1. Schedule designated P. U. C. O. No. 8, applying to Akron Exchange Area and schedule designated P. U. C. O. No. 5, applying to Barberton Exchange Area, filed to become effective May 2nd, 1924.

Apr. 25. Complaint against said schedule, P. U. C. O. No. 8, filed by City of Akron, Ohio.

Apr. 28. Protest against said schedule, P. U. C. O. No. 5, filed by city of Barberton, Ohio.

Apr. 28. Order issued by Commission suspending said schedules for a period of 120 days from April 1st, 1924. Assignment of hearing deferred pending further order of the Commission. Parties interested served with copies of such order.

Apr. 29. Complaint against said proposed schedules filed by city of Cuyahoga Falls.

May 5. Publishers' certificates of publication of the notice of the filing of said schedules filed by respondent.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $95,000.00. Surety bond in the sum of $95,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

May 28. Joint application for rehearing filed by the cities of Akron, Barberton and Cuyahoga Falls.

June 6. Entry made by Commission denying said application for rehearing. Copies of such entry served on parties in interest.

June 25. Answer of The Ohio Bell Telephone Company filed.

Aug. 4. Issuance and service of summons-in-error Supreme Court waived.

Aug. 14. Entry transmitting papers to Supreme Court.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307.)

Dec. 23. Motion of Commission to dismiss petition-in-error, filed in the Supreme Court of Ohio by the City of Akron, Ohio, sustained. (Supreme Court No. 18745.)

Dec. 26. Papers in this proceeding received from the Supreme Court.

NOTE—For future Docket entries, see Formal Docket No. 3307.

[fol. 990] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 139

In re Proposed Increased Rates and Charges of the Ohio Bell Telephone Company for Telephone Service Furnished in Toledo Exchange Area, Filed to Become Effective July 1st, 1924

1924

Apr. 1. Schedule designated P. U. C. O. No. 5, applying to Toledo Exchange Area, filed to become effective July 1st, 1924.

Apr. 25. Protest filed against said schedule by city of Toledo.

Apr. 28. Order issued by Commission suspending said schedule for a period of 120 days from April 1st, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such entry served on parties in interest.

May 5. Certificates of publication of the notice of the filing of said schedule filed by respondent.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $98,000.00. Surety bond in the sum of $98,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

June 25. Answer filed by respondent company.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307.)

[fol. 991] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 141

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Dayton Exchange Area, Filed to Become Effective May 2, 1924

1924

April 1. Schedule designated P. U. C. O. No. 6, applying to Dayton Exchange Area filed to become effective May 2, 1924.

April 29. Complaint against said schedule filed by J. B. Harshman, City Attorney, on behalf of the City of Dayton, Ohio.

April 30. Order issued by Commission suspending said schedule for a period of 120 days from April 1, 1924. Assignment of hearing deferred pending further order of the Commission. Parties in interest served with copies of such order.

May 5. Publishers' certificates of publication of the notice of the filing of said schedule filed by respondent company.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $105,000.00. Surety bond in the sum of $105,000.00 filed by respondent. Entry made by Commission approving said bond. Parties in interest served with copies of such entry.

May 28. Motion for rehearing filed by City of Dayton.

June 6. Entry made by Commission denying said motion for rehearing. Parties in interest served with copies of such entry.

June 16. Communication received from Attorneys McConnaughey & Shea, in re motion for rehearing filed by City of Dayton under date of May 28, 1924.

June 25. Answer of The Ohio Bell Telephone Company filed.

June 3. Entry made by Commission denying the motion of the City of Dayton for a rehearing with respect to the matters and things decided and determined by the Commission's order made and entered herein under date of April 30, 1924. Copies of such entry served on parties in interest.

Aug. 1. Issuance and service of summons in error Supreme Court waived.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307).

Dec. 23. Motion of Commission to dismiss petition-in-error, filed in the Supreme Court of Ohio by the City of Dayton, Ohio, sustained. (Supreme Court No. 18,741).

Dec. 26. Papers in this proceeding received from Supreme Court.

NOTE.—For future docket entries, see Formal Docket No. 3307.

[fol. 992] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 142

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Cleveland Exchange Area, Filed to Become Effective May 2nd, 1924

1924

Apr. 1. Schedule designated P. U. C. O. No. 4 for Cleveland Exchange Area, filed to become effective May 2nd, 1924.

Apr. 29. Complaint against said proposed schedule filed by Carl F. Shuler, Director of Law, on behalf of the city of Cleveland.

Apr. 30. Order issued by Commission suspending said schedule for a period of 120 days from April 1st, 1924. Assignment of hearing deferred pending further order of the Commission. Parties in interest served with copies of said order.

May 5. Publishers' certificates of publication of the notice of the filing of said schedule filed by respondent company.

May 15. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $90,000.00. Surety bond in the sum of $90,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307).

[fol. 993] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 143

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Piqua Exchange Area, Filed to Become Effective June 1st, 1924

1924

May 1. Schedule designated P. U. C. O. No. 3, applying to Piqua Exchange, filed to become effective June 1st, 1924.

May 26. Protest against the proposed schedule filed by the city of Piqua, Ohio.

May 27. Order issued by Commission suspending said schedule for a period of 120 days from May 1st, 1924. Assignment of hearing deferred pending further order of the Commission. Parties in interest served with copies of said order.

June 4. Publishers' certificates of publication of the notice of the filing of said schedule filed by respondent.

June 5. Application filed by respondent asking Commission to determine amount of bond or undertaking to be filed. Bond fixed in the sum of $4,000.00. Surety bond in the sum of $4,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Formal Case No. 3307. (For further entries see docket in Formal Case 3307).

[fol. 994] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 146

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company, Steubenville Exchange, Filed to Become Effective June 1, 1924

1924

May 1. Schedule, designated P. U. C. O. No. 1, filed to become effective June 1, 1924.

June 4. Certificate of publication of newspaper notice filed.

June 5. Protest against said schedule filed by Steubenville Chamber of Commerce.

June 6. Order issued by Commission suspending said schedule for period of 120 days from May 1, 1924. Assignment of hearing deferred pending further order of Commission. Copies of such order served on parties in interest.

July 5. Letter received from General Counsel for respondent company stating that the Company disagrees with the Commission as to its practice in suspending said schedule subsequent to its effective date.

July 26. Petition, protesting against said schedule, filed by J. R. McCleary, et al.

July 26. Application filed by respondent company, requesting Commission to fix amount of bond to be filed.

July 29. Surety bond, in the sum of $11,000.00 filed by respondent.

July 30. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Aug. 29. Petition, protesting against said schedule, filed by Fred A. Stone, Attorney-at-Law, on behalf of the petitioners.

Oct. 14. This proceeding consolidated with Cause No. 3307 (the so-called "state-wide" case). For future docket entries, see Formal Docket No. 3307.

[fol. 995] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 147

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company, Niles, Ohio, Exchange, Filed to Become Effective July 1st, 1924

1924

May 31. Schedule designated P. U. C. O. No. 1, filed to become effective July 1, 1924.

June 5. Protest against said schedule filed by Kiwanis Club, Niles, Ohio.

June 17. Order issued by Commission suspending said schedule for a period of 120 days from May 31st, 1924.

Assignment of hearing deferred pending further order of Commission.

June 30. Application filed by respondent company requesting Commission to fix amount of bond to be filed. Bond fixed in the sum of $3,000.00. Surety bond in the sum of $3,000.00 filed by respondent.

July 1. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Cause No. 3307 (The so-called State-Wide Case). For future docket entries, see Formal Docket No. 3307.

[fol. 996] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 149

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Girard, Ohio, Exchange Area, Filed to Become Effective July 1, 1924

1924

May 31. Schedule designated P. U. C. O. No. 1 filed to become effective July 1st, 1924.

June 19. Protest against said schedule filed by City of Girard.

June 20. Order issued by Commission suspending said schedule for a period of 120 days from May 31st, 1924. Assignment of hearing deferred pending further order of Commission. Copies of such entry served on parties in interest.

June 21. Certificate of Publication of newspaper notice filed by respondent company.

June 30. Application filed by respondent company asking Commission to fix amount of bond to be filed. Bond fixed in the sum of $1,000.00. Surety bond in the sum of $1,000.00 filed.

July 1. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Cause No. 3307 (The so-called State Wide Case). For future docket entries, see Formal Docket No. 3307.

[fol. 997] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 156

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Toronto Exchange, Filed to Become Effective September 1, 1924

1924

Aug. 1. Schedule, designated P. U. C. O. No. 1, filed to become effective September 1, 1924.

Aug. 28. Protest against said schedule filed by the G. & G. Club, Toronto, Ohio.

Aug. 29. Protests against said schedule filed by the N. & N. Club, The Japanese Club, The Federated Woman's Club, The Kiwanis Club, W. S. Cable, et al., Toronto, Ohio.

Aug. 29. Order issued by Commission, suspending said schedule for a period of 120 days from August 1, 1924. Hearing assigned for nine o'clock A. M., October 16, 1924. Parties in interest served with copies of such order.

Sept. 2. Protest against said schedule filed by Thimble Bee Club, Toronto, Ohio.

Sept. 3. Certificate of publication of newspaper notice, filed.

Sept. 8. Application filed by respondent company asking Commission to fix amount of bond. Bond fixed in the sum of $1,000.00. Surety bond, in the sum of $1,000.00, filed by respondent company. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Formal Case No. 3307 (the so-called "state-wide" case). For future docket entries, see Formal Docket No. 3307.

[fol. 998] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 157

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its East Palestine Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule, designated P. U. C. O. No. 1, filed to become effective October 1, 1924.

Sept. 18. Protest against said schedule filed by City of East Palestine, Ohio.

Sept. 24. Order issued by Commission suspending said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such order served on parties in interest.

Sept. 30. Protest against said schedule filed by the Afternoon Country Club.

Oct. 1. Application filed by respondent company asking Commission to determine amount of bond. Bond fixed in the sum of $2,000.00.

Oct. 2. Surety bond, in the sum of $2,000.00, filed by respondent company. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Oct. 14. This proceeding consolidated with Formal Case No. 3307 (the so-called "state-wide" case). For future docket entries, see Formal Docket No. 3307.

[fol. 999] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 159

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its South Charleston, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule, designated P. U. C. O. No. 5, applicable to South Charleston, Ohio, Exchange Area, filed by

The Ohio Bell Telephone Company to become effective October 1, 1924.

Sept. 24. Protest against said schedule filed by Stewart L. Tatum, Attorney at Law, Springfield, Ohio, on behalf of Village of South Charleston, Ohio.

Sept. 27. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such order served on parties in interest.

Oct. 3. Certificate of Publication of newspaper notice filed.

Oct. 7. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $1,000.

Oct. 10. Surety bond in the sum of $1,000 filed by respondent company.

Oct. 15. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future docket entries see Formal Docket No. 3307.

[fol. 1000] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 160

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Alton, Ohio, Exchange Area, Filed to Become Effective October 1st, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Alton, Ohio, Exchange Area, filed to become effective October 1st, 1924.

Sept. 17. Protest against said schedule filed by a Committee representing The Farm Bureau of Franklin County, Ohio.

Sept. 20. Protest against said schedule filed by Walter W. Elliott et al.

Sept. 29. Order issued by Commission providing for the

suspension of said schedule for a period of 120 days from August 30th, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such order served on parties in interest.

Oct. 3. Certificates of Publication of newspaper notice filed.

Oct. 22. Application filed by respondent Company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $225.00. Surety bond in the said sum of $225.00 filed by respondent.

Nov. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1001] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 161

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Gahanna, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Gahanna, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 25. Complaint against said schedule filed by Arthur Cheney, et al.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such order served on parties in interest.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $800.00. Surety bond in said sum of $800.00 filed by respondent.

Nov. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1002] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 162

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Worthington, Ohio, Exchange Area, Filed to Become Effective October 1st, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Worthington, Ohio, Exchange Area, filed to become effective October 1st, 1924.

Sept. 20. Protest against said schedule filed by a number of subscribers served from Worthington, Ohio, Exchange.

Sept. 27. Protest against said schedule filed by the Council of Village of Worthington, Ohio.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of Commission. Copies of such order served on parties in interest.

Oct. 1. Protest and memorandum in support thereof, against said schedule, filed by the Brown Fruit Farm, et al.

Oct. 3. Certificate of publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond filed in the sum of $2,575.00. Surety bond in the said sum of $2,575.00 filed by respondent.

Nov. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1003] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 163

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its New Albany, Ohio, Exchange Area, Filed to Become Effective October 1, 1924.

1924

Aug. 30. Schedule identified as P. U. C. O. No. 2, applicable to New Albany, Ohio, Exchange Area, filed to become effective October 1st, 1924.

Sept. 17. Protest against said schedule filed by George F. Elbon, et al.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of Commission. Copies of the order of suspension served on parties in interest.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent Company.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Surety bond fixed in the sum of $700.00. Surety bond in the said sum of $700.00 filed by respondent.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1004] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 164

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Dublin, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Dublin, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17. Protest against said schedule filed by The Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of the Commission. Copies of such order of suspension served on parties in interest.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $650.00. Surety bond in said sum of $650.00 filed by respondent.

Nov. 5. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1005] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 165

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Galloway, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule identified as P. U. C. O. No. 2, applicable to Galloway, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17 Protest against said schedule filed by The Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Assignment of hearing deferred pending further order of Commission. Copies of the order of suspension served on parties in interest.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent Company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $450.00. Surety bond in the said sum of $450.00 filed by respondent company.

Nov. 5. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1006] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 166

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Harrisburg Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Harrisburg, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17. Protest against said schedule filed by the Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of said order served on parties in interest. Assignment of hearing deferred pending further order of the Commission.

Sept. 30. Protest against said schedule filed by certain subscribers served from the Harrisburg Exchange.

Oct. 3. Certificates of publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company, asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $1,100.00. Surety bond, in the said sum of $1,100.00, filed by respondent company.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1007] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 167

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Hilliards, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Hilliards, Ohio, Exchange Area, filed to become effective October 1, 1929.

Sept. 17. Protest against said schedule filed by the Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of such order served on parties in interest. Assignment of hearing deferred pending further order of Commission.

Oct. 3. Certificates of publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $800.00. Surety bond, in the said sum of $800.00, filed by respondent company.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1008] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 168

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Lockbourne Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Lockbourne, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17. Protest against said schedule filed by the Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of said order served on parties in interest. Assignment of hearing deferred pending further order of Commission.

Oct. 3. Certificates of publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $400.00. Surety bond, in the said sum of $400.00, filed by respondent.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1009] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 169

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Reynoldsburg, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Reynoldsburg, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17. Protest against said schedule filed by The Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of such order served on parties in interest. Assignment of hearing deferred pending further order of the Commission.

Oct. 3. Certificates of Publication of newspaper notice filed.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $1250.00. Surety bond in the said sum of $1250.00 filed by respondent.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1010] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 170

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Groveport, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Groveport, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 17. Protest against said schedule filed by The Franklin County Farm Bureau.

Sept. 29. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of such order served on parties in interest. Assignment of hearing deferred pending further order of the Commission.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $1250.00. Surety bond in the said sum of $1250.00 filed by respondent company.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1011] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 171

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its Pickerington, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 2, applicable to Pickerington, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 30. Order issued by Commission upon its own initiative providing for the suspension of said schedule for a period of 120 days from August 30, 1924. Copies of such order served on parties in interest. Assignment of hearing deferred pending further order of Commission.

Oct. 3. Certificates of Publication of newspaper notice filed by respondent.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $750.00. Surety bond in the said sum of $750.00 filed by respondent company.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding was consolidated with Formal Case No. 307, the so-called "state wide" case. For future Docket entries see Formal Docket No. 3307.

[fol. 1012] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 172

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Service Furnished in Its South Solon, Ohio, Exchange Area, Filed to Become Effective October 1, 1924

1924

Aug. 30. Schedule designated P. U. C. O. No. 5, applicable to South Solon, Ohio, Exchange Area, filed to become effective October 1, 1924.

Sept. 30. Order issued by Commission upon its own initiative providing for the suspension of said schedule for a period of 120 days from August 30th, 1924. Copies of such order served on parties in interest. Assignment of hearing deferred pending further order of the Commission.

Oct. 3. Certificate of Publication of newspaper notice filed by respondent company.

Oct. 22. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $150.00. Surety bond in the said sum of $150.00 filed by respondent company.

Nov. 6. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries see Formal Docket No. 3307.

[fol. 1013] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 196

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Service Furnished in Bellaire, Ohio, Exchange Area, Filed to Become Effective June 1st, 1925

1925

May 1. Schedule designated P. U. C. O. No. 2, applicable to Bellaire, Ohio, Exchange Area, filed to become effective June 1, 1925.

May 13. Protest against said schedule filed by the Village of Shadyside, Ohio.

May 25. Protest against said schedule filed by C. A. Getrost, Secretary of B. M. & P. I. U. No. 9, Bellaire, Ohio.

May 25. Protest against said schedule filed by the Chamber of Commerce of Bellaire, Ohio.

May 27. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from May 1, 1925. Assignment of hearing deferred pending further order of Commission. Copies of such order served on parties in interest.

June 4. Protest against said schedule filed by the Shadyside Americus Club.

June 5. Certificates of Publication of newspaper notice filed.

June 16. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $9,000.00. Surety bond in the said sum of $9,000.00 filed by respondent. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1014] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 197

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Service Furnished in Bridgeport, Ohio, Exchange Area, Filed to Become Effective June 1, 1925

1925

May 1. Schedule designated P. U. C. O. No. 2 applicable to Bridgeport, Ohio, Exchange Area, filed to become effective June 1, 1925.

May 18. Protest against said schedule filed by the Village of Bridgeport, Ohio.

May 27. Order issued by the Commission providing for the suspension of said schedule for a period of 120 days from May 1, 1925. Assignment of hearing deferred pending further order of Commission. Copies of such order served on parties in interest.

June 5. Certificate of Publication of newspaper notice filed.

June 10. Protest against said schedule filed by the Lions Club, Bridgeport, Ohio.

June 16. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $4,000.00. Surety bond in the said sum of $4,000.00 filed by respondent company. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Docket No. 3307.

[fol. 1015] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 198

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Service Furnished in Kent, Ohio, Exchange Area, Filed to Become Effective June 1, 1925.

1925

May 1. Schedule designated P. U. C. O. No. 4, applicable to Kent, Ohio, Exchange Area, filed to become effective June 1, 1925.

May 8. Protest against said schedule filed by William A. Cluff, Kent, Ohio.

May 28. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from May 1st, 1925. Assignment of hearing deferred pending further order of Commission. Copies of such order served on parties in interest.

June 5. Certificates of Publication of newspaper notice filed.

June 16. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $7000.00. Surety bond in the said sum of $7000.00 filed by respondent company. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future entries see Formal Docket No. 3307.

[fol. 1016] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 199

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Service Furnished in Martins Ferry, Ohio, Exchange Area, Filed to Become Effective June 1, 1925

1925

May 1. Schedule designated P. U. C. O. No. 2, applicable to Martins Ferry, Ohio, Exchange Area, filed by The Ohio Bell Telephone Company to become effective June 1st, 1925.

May 21. Protest against said schedule filed by Martins Ferry Board of Trade.

May 27. Protest against said schedule filed by Belmont City Lodge No. 221, I. O. O. F.

May 28. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from May 1st, 1925. Assignment of hearing deferred pending further order of the Commission. Copies of such order served on parties in interest.

June 5. Certificate of Publication of newspaper notice filed.

June 16. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $6000.00. Surety bond in the said sum of $6000.00 filed by respondent company. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state-wide" case. For future docket entries see Formal Docket No. 3307.

[fol. 1017] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 204

In re Proposed Tariff of The Ohio Bell Telephone Company for Service Furnished in Osborn, Ohio, Exchange Area, Filed to Become Effective July 1st, 1925

1925

May 29. Schedule designated P. U. C. O. No. 8, applicable to Osborn, Ohio, Exchange Area filed to become effective July 1st, 1925.

June 30. Protests against said schedule filed by Morris D. Rice, Attorney at Law, on behalf of The Portland Cement Company and the Village of Osborn, Ohio.

June 30. Order issued by the Commission providing for the suspension of said schedule for a period of 120 days from May 29th, 1925. Assignment of hearing deferred pending further order of the Commission.

July 23. Application filed by respondent Company re-

questing Commission to determine amount of bond to be filed. Bond fixed in the sum of $300.00. Surety bond in the sum of $300.00 filed by respondent company.

July 29. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Aug. 11. Certificate of Publication of newspaper notice filed.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future Docket Entries, see Formal Docket No. 3307.

[fol. 1018] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 205

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Service Furnished in Canfield, Ohio, Exchange Area, Filed to Become Effective August 1, 1925

1925

July 1. Schedule designated P. U. C. O. No. 4, applicable to Canfield, Ohio, Exchange Area, filed to become effective August 1st, 1925.

July 14. Protest against said schedule filed by the Village of Canfield, Ohio.

July 15. Order issued by Commission providing for the suspension of said schedule for a period of 120 days from July 1st, 1925. Assignment of hearing deferred pending further order of the Commission.

July 23. Application filed by respondent Company requesting Commission to determine amount of bond to be filed. Bond fixed in the sum of $1,300. Surety bond in the said sum of $1,300 filed by respondent company.

July 29. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Aug. 11. Certificate of Publication of newspaper notice filed.

NOTE.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries see Formal Docket No. 3307.

[fol. 1019] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 214

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Its Columbus, Ohio, Exchange Area, Filed to Become Effective December 1, 1925

1925

Oct. 31. Schedule identified as P. U. C. O. No. 6, applicable to Columbus, Ohio, Exchange Area, filed to become effective December 1, 1925.

Nov. 14. Motion, complaint, protest and memorandum in support thereof, in regard to said schedule, P. U. C. O. No. 6, filed on behalf of the City of Columbus, Ohio, by its City Attorney, Chas. A. Leach.

Nov. 24. Order issued by Commission providing for suspension of said schedule for a period of 120 days from October 31, 1925. Hearing on the motion of the City of Columbus, Ohio, to strike said schedule from the files, assigned for nine o'clock A. M., Thursday, December 10, 1925. Copies of such order served on parties in interest.

Dec. 3. Certificates of publication of newspaper notice, filed.

Dec. 10. Memorandum, on behalf of The Ohio Bell Telephone Company, filed by its Attorneys, Karl E. Burr and S. H. Tolles.

Dec. 10. Hearing held on motion heretofore filed herein by the City of Columbus, Ohio, to strike said schedule, P. U. C. O. No. 6, from the files of the Commission.

Exhibits filed by respondent company:

Company Exhibit "A" (Copy of order issued by Commission in case No. 2367, September 17, 1921);

Company Exhibit "B" (Copy of motion filed by City of Columbus, Ohio, in Case No. 2367);

Company Exhibit "C" (Copy of joint resolution of Ohio General Assembly Memoralizing Congress to eliminate dual telephone service in the State of Ohio—109 Ohio Laws, Page 629);

Company Exhibit "D" (Copy of schedule of proposed rates).

Exhibits filed on behalf of City of Columbus, Ohio:

City Exhibit No. 1 (Copy of newspaper notice of filing of said schedule, P. U. C. O. No. 6);

City Exhibit No. 2 (Copy of transcript of oral arguments heard Friday, September 9, 1921, in regard to joint petition of The Ohio Bell Telephone Company and the Ohio State Telephone Company, Docket Nos. 2367 and 2368);

City Exhibit No. 3 (Copy of joint petition filed by said companies in Docket No. 2367).

1926

Feb. 8. Order issued by Commission overruling said motion of the City of Columbus, Ohio, to strike said schedule from the files. City of Columbus excepts. Exceptions noted. Copies of such order served on parties in interest.

Feb. 8. Application filed by respondent company requesting Commission to determine amount of bond to be filed. Bond fixed in the sum of $192,000.00. Surety bond, in the said sum of $192,000.00 filed by respondent company.

Feb. 9. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Mar. 5. Protest against said schedule, P. U. C. O. No. 6, herein under suspension, filed by H. E. Fisher, et al., Linden, Ohio.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Case No. 3307.

[fol. 1020] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 218

In re Proposed Increased Rates and Charges of The Ohio Bell Telephone Company for Telephone Service Furnished in Its Springfield, Ohio, Exchange Area, Filed to Become Effective January 1, 1926

1925

Dec. 1. Schedule designated P. U. C. O. No. 9, applicable to Springfield, Ohio, Exchange Area, filed to become effective January 1st, 1926.

Dec. 16. Motion, complaint and protest, and memorandum on said motion, in regard to said schedule

P. U. C. O. No. 9, filed by M. E. Spencer, City Solicitor of the City of Springfield, Ohio.

Dec. 21. Order issued by Commission providing for suspension of said schedule for a period of 120 days from December 1st, 1925. Motion filed by the City of Springfield, Ohio, to strike said schedule from the files assigned for hearing at 12:30 P. M., Tuesday, February 9, 1926. Parties in interest served with copies of said order.

Dec. 31. Certificates of Publication of newspaper notice filed by the respondent Company.

1926

Jan. 15. Certified copy of resolution No. 849 adopted by the City Commission of Springfield, Ohio, requesting The Public Utilities Commission of Ohio to investigate and ascertain the value of the property of the respondent company in Springfield, Ohio, Exchange Area, filed.

Feb. 10. Hearing Held. No exhibits filed.

Feb. 13. Order issued by Commission over-ruling motion of the City of Springfield, Ohio, to strike said schedule P. U. C. O. No. 9 from the files of the Commission. City of Springfield, Ohio, excepted. Exceptions noted.

Mar. 12. Application filed by respondent Company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $23,000.00. Surety bond in the sum of $23,000.00 filed by respondent.

Mar. 16. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307, the so-called "state wide" case. For future docket entries, see Formal Case No. 3307.

[fol. 1021] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 237

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Telephone Service Furnished in its Coshocton, Ohio, Exchange Area, Filed to Become Effective July 1, 1926.

1926

May 29. Schedule identified as P. U. C. O. No. 4, applicable to Coshocton, Ohio, Exchange Area, filed to become effective July 1, 1926.

June 17. Protest against said schedule filed by The Coshocton Business Mens Association.

June 29. Order issued by Commission providing for the suspension of said schedules for a period of 120 days from May 29, 1926. Copies of such order served on parties in interest.

June 30. Certificate of Publication of newspaper notice filed.

July 23. Application filed by respondent Company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $4,200.00. Surety bond in the said sum of $4,200.00 filed by respondent company.

Aug. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

Note.—This proceeding consolidated with Formal Case No. 3307 (the so-called "state wide" case). For further docket entries, see Formal Docket No. 3307.

[fol. 1022] Before Public Utilities Commission of Ohio

Advanced Utility Rate Proceeding No. 238

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Telephone Service in its London, Ohio, Exchange Area, Filed to Become Effective July 1, 1926.

1926

May 29. Schedule identified as P. U. C. O. No. 7, applicable to London, Ohio, Exchange Area, filed to become effective July 1, 1926.

June 29. Order issued by Commission upon its own initiative providing for the suspension of said schedule for a period of 120 days from May 29, 1926. Copies of such order served on parties in interest.

June 30. Certificates of Publication of newspaper notice filed.

July 23. Application filed by respondent company asking Commission to determine amount of bond to be filed by respondent company. Bond fixed in the sum of $1000.00. Surety bond in said sum of $1000.00 filed by respondent company.

Aug. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE: This proceeding consolidated with Formal Case No. 3307 (the so-called "state wide" case). For further docket entries, see Formal Docket No. 3307.

[fol. 1023] BEFORE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 240

In re Proposed Increased Rates of The Ohio Bell Telephone Company for Telephone Service Furnished in its Mentor, Ohio, Exchange Area, Filed to Become Effective July 1, 1926.

1926

May 29. Schedule identified as P. U. C. O. No. 1, applicable to Mentor, Ohio, Exchange Area, filed to become effective July 1, 1926.

June 29. Order issued by Commission upon its own initiative providing for the suspension of said schedule for a period of 120 days from May 29, 1926. Copies of such order served on parties in interest.

June 30. Certificates of Publication of newspaper notice filed.

July 23. Application filed by respondent company asking Commission to determine amount of bond to be filed. Bond fixed in the sum of $500.00. Surety bond in the said sum of $500.00 filed by respondent company.

Aug. 3. Entry made by Commission approving said bond. Copies of such entry served on parties in interest.

NOTE: This proceeding consolidated with Formal Case No. 3307 (the so-called "state wide" case). For further docket entries, see Formal Docket No. 3307.